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Vol. II
TRANSCRIPT OF RECORD

(Pages 545 to 1048)

Supreme Court of the United States

OCTOBER TERM, 1963

No. 188

**UNITED CONSTRUCTION WORKERS, AFFILIATED
WITH UNITED MINE WORKERS OF AMERICA,
ET AL., PETITIONERS,**

vs.

LABURNUM CONSTRUCTION CORPORATION

**ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF APPEALS OF
THE COMMONWEALTH OF VIRGINIA**

WRITING FOR CERTIORARI FILED JULY 10, 1963

CERTIORARI GRANTED JANUARY 12, 1964

Vol. II

page 293 }

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Hearing in the above-entitled matter was resumed, pursuant to recess, at 10:00 o'clock a. m., before the Honorable Harold F. Sneed, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on January 24, 1951.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Francis V. Lowden, Jr., Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Fred G. Pollard, Colonel Crampton Harris, Counsel for Defendants.

Also Present: Robert N. Pollard, Jr.

page 294 }

* * * * *

ALEXANDER HAMILTON BRYAN

the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

DIRECT EXAMINATION (continued).

(Counsel conferring.)

Mr. Mullen: If Your Honor please, I would like to have—

Mr. Robertson: I haven't offered it yet. You have had it overnight.

Mr. Mullen: But I had some other things to do overnight, too.

The Court: What is the situation, gentlemen?

Alexander Hamilton Bryan.

Mr. Robertson: I will develop that right now, Your Honor.

By Mr. Robertson:

Q. Mr. Bryan, I hand you a booklet entitled, "Laburnum Construction Corporation, Richmond, Virginia, Construction Record," and ask you what that is?

A. It is a list of the various jobs that we have performed from May, 1942, to December, 1949.

I should correct that. It is not all of the work, but the major jobs.

Q. What total volume of construction does it show during that period?

A. \$20,253,965.49.

Q. Was that data compiled under your supervision and direction?

A. Yes, sir. I personally compiled a large portion of it.

Mr. Robertson: I offer it in evidence and ask that it be marked Plaintiff's Exhibit No. 22.

The Court: Mr. Mullen?

Mr. Mullen: If Your Honor please, there may be objection or there may not be objection, I can't say. I haven't had a chance to read it.

Mr. Robertson: I would suggest that I just offer it.

The Court: The Court will withhold decision.

Mr. Robertson: Mark it, please.

(The book referred to was marked for identification Plaintiff's Exhibit No. 22.)

The Court: I have marked it, and will withhold admitting it into evidence.

page 296 } By Mr. Robertson:

Q. Mr. Bryan, your field clerk at the job site on July 26, 1949, was who?

A. Mr. Maynard Ragan. His title was Chief Clerk.

Q. When you got to the job site on the afternoon of Tuesday, July 26, did Mr. Ragan give you a picket sign?

A. When I got to our office at the job site on July 26, 1949, Mr. Ragan handed to me a placard, a piece of cardboard, sometimes called a picket sign, which had been placed on a barrel just outside of our office, which Mr. Ragan had taken down—

Alexander Hamilton Bryan.

Mr. Fred G. Pollard: I object to that, Your Honor, as hearsay.

Mr. Robertson: It is a report Mr. Ragan made to him in the ordinary course of business. We are going to follow it up with Ragan himself when we get to it. It is admissible as a report made to the President of the Company by his Chief Clerk on the job.

The Court: I will allow him to answer.

(Object exhibited to Mr. Mullen.)

By Mr. Robertson:

Q. Is that the picket sign which Mr. Ragan delivered to you on the afternoon of July 26?

A. Yes. I marked it "7/26/49—AHB."

Q. Read it, please, out loud.

page 297 } A. "UWA Pickett Line." The word "picket" is spelled "p-i-c-k-e-t-t." "Contractors—Laburnum."

Mr. Robertson: I offer the picket sign in evidence and ask that it be marked Plaintiff's Exhibit No. 23.

Mr. Mullen: Read the answer after you have marked it, please.

(The picket sign referred to was marked Plaintiff's Exhibit 23 and received in evidence.)

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page 298 } By Mr. Robertson:

Q. Now, Mr. Bryan, on the afternoon of Tuesday, July 26, when you left the job site and started over to the 25 dwellings and met Mr. Hart at the railroad crossing and had the conversation with him about which you testified, were any of your men with you, present during that conversation?

A. Cecil Delinger and Tony Meli.

Q. When you left the stand yesterday you had testified that after talking with Mr. Hart you went to the Pond Creek Pochontas Company office there at the 25 dwellings and reported your conversation with Mr. Haslam, the top Pond Creek man

Alexander Hamilton Bryan.

at that place. I think you testified that you and Mr. Delinger and Mr. Meli then went to Salyersville and ate supper and then that the three of you went on to Paintsville.

A. That is correct.

Q. When you got to Paintsville what did you do?

A. A special meeting of Paintsville Carpenters Local No. 646 had been called for the purpose of discussing and considering what had occurred at our job that afternoon. The meeting was held in the Town Hall at Paintsville at 8 p. m. Mr. Meli, Mr. Delinger and I went to the meeting.

Q. Was there a man at that meeting named Monroe Sublett?

A. Monroe Sublett was president of the local page 299 } and he called the meeting to order.

Q. Did you and Mr. Delinger and Mr. Meli go to the meeting?

A. We had asked if we could attend the meeting and were informed that we could, and we went.

Q. About how many men would you say attended that meeting?

A. About 50.

Q. Did you make a talk at the meeting?

A. The president, Mr. Sublett, asked me if I had anything to say, if I cared to say anything, and so I got up and went to the front of the meeting and made a talk.

Q. I am going to ask you to tell the jury the substance of what you said.

A. I told the group that we had an agreement with the Richmond Building and Construction Trades Council and with various A. F. of L. Unions, and that we used A. F. of L. labor on all our jobs throughout the country. I told them that we had worked in Chicago and Detroit, as far south as Mobile, that we had worked in Ohio and Pennsylvania, North Carolina and Georgia, and that the work which we had in Breathitt County, Kentucky, was the first job that we had ever had in Kentucky. I told them that I sincerely appreciated the efforts of all our people, our employees, in helping to make the job a success. I said that I had done my best to try to get to the job by 12 o'clock noon that day page 300 } and had driven all night from Richmond and would have been there if it hadn't been for the fact that we had a car breakdown. I said that based on my experience with the United Construction Workers that afternoon I didn't care to make an agreement with that organization or to use any of the men. I told them that I thought that

Alexander Hamilton Bryan.

what had happened that afternoon was nothing short of disgraceful, first in what the United Construction Workers did in coming to the job in force and in threatening and intimidating our workers, and next in what our workers did in letting themselves be bullied and bluffed without making an attempt to keep the jobs that they had. I told them that I told Mr. Hart—I mentioned the conversation that I had with Mr. Hart that afternoon—I told them that I told Mr. Hart that I expected to have the men on the job the next morning and that I hoped all of our people would return to work, that I was then trying to make arrangements for police protection at the job and hoped that I could do it, and that I thought it was of the utmost importance that all of our people return to work the next morning and to keep on working until they were made to stop work and not just stop because of some threats that might be made.

In short, I did my level best to try to persuade those people to return to work.

Q. What was the reaction of the meeting to your talk?

A. The business agent, Mr. Bert Preston, got page 301 } up and in effect he said that I just didn't know what I was talking about, that the United Construction Workers meant business, and he knew it, that we didn't have any police protection, that our people were defenseless, were hopelessly outnumbered, that if he hadn't stopped the argument in the toolhouse between Johnnie Arnett and Mr. Hart that afternoon guns would have been used and some of our people would have been shot and maybe killed. He said that the people—

Mr. Fred G. Pollard: I object to that, Your Honor. He is now testifying to what Mr. Preston said and not what was reported to him. It is hearsay.

Mr. Robertson: If Your Honor please, as shown in our trial brief, what he is saying here is relevant and admissible on the question of putting the men in fear and whether or not they were actually afraid to go back or whether there is a subterfuge here to make out like they were afraid when they weren't. Also, Your Honor will recall that Mr. Mullen in his opening statement said they were going to show everything that happened at these United Construction Workers meetings that we know nothing about. We submit that everything that transpired at this union meeting this night is relevant certainly on two grounds: One, the jury in all the cir-

Alexander Hamilton Bryan.

circumstances of the case can make up their minds whether they think that those utterances were in truth made or whether it is just a story out of Mr. Bryan's imagination, and second, whether or not, along with everything else in the case, it tends to show whether these men quit the job because they were scared or whether they quit it for some other reason.

The Court: The Court is of the opinion that the utterances in this connection are admissible.

Mr. Fred G. Pollard: An exception.

By Mr. Robertson:

Q. Go ahead.

Mr. Mullen: Note an exception, please.

The Witness: That the people in Breathitt, Knott and Floyd Counties, Kentucky, had the reputation for shooting on the slightest provocation, and that experience had shown they would do so. That Mr. Hart and the United Construction Workers had excited those people in the hills and that in his opinion they would shoot at our workers, hide in the hills and shoot at our workers using high-powered rifles, or would shoot at them from ambush along the roads leading to and from the job site.

Mr. Preston said it was too dangerous to go back to work and advised against it.

By Mr. Robertson:

Q. Did he say anything to you that they would put you on the spot about leading them?

page 303 1/2 A. Well, after Mr. Preston finished talking there was a general discussion. Some of the people thought they should go back to work and some of the people thought it was too dangerous. Finally Mr. Sublett, president of the local, sounded for order and asked me a question: "Mr. Bryan, will you put on a pair of carpenter overalls and lead us across the picket line tomorrow morning?" I told him, Mr. Sublett, "Yes, I certainly will." Mr. Sublett said, "I think we ought to go back to work."

After that, a vote was taken, and it was agreed unanimously, I think, that the men would return to work in the morning. It was agreed that we would meet at Salyersville,

Alexander Hamilton Bryan.

Kentucky, at a gas station across the street from the Carpenter Hotel at six o'clock, so we would go to the job together.

page 304 } Q. After that decision was reached, did Mr. Bert Preston have anything to say about whether the men would go back armed, or not?

A. After the vote was taken, Mr. Preston got up and said, "Anybody who goes back to the job ought to carry not less than a .38." I got up and advised against that. I said I didn't want any of our men to be hurt; that if there was a display of guns, we could stop and go home, and please not to carry any guns; that we would try to settle our differences another way.

Q. What was the purpose in meeting the next morning at Salyersville?

A. We all wanted to go to the job together in a group. We couldn't get in the same automobile. There were too many. We went in a kind of caravan, one vehicle behind the other.

Q. That was on Tuesday night, the 26th. Did you meet at Salyersville the next morning, Wednesday, the 27th, as planned?

A. Yes, sir.

We had carpenters, iron workers, electricians, quite a crowd of men who met there.

Q. How many men would you estimate were there, altogether?

A. Twenty-five or thirty.

page 305 } Q. How many conveyances did they use to go from Salyersville to the job site?

A. That would be just a guess; I don't know.

Q. Did they pretty much stay together on the way over there?

A. They sort of went off intermittently, and gradually all caught up with each other, one behind the other. There might have been ten cars, I don't know.

Q. Did you hear Mr. Mullen's opening statement Monday?

A. Yes, sir.

Q. In that statement, you will recall that he said that Mr. Hart was not at the job site on Wednesday, the 27th, because he had duties elsewhere. Is that correct or incorrect?

A. I didn't see Mr. Hart at the job site when we got there. In fact, I didn't see him that day at all.

Alexander Hamilton Bryan.

Q. Who was with you when you reached the job site in your conveyance, if you remember?

A. I went out with Tony Meli, and perhaps Cecil Delinger was in the car. I am sure I was with Tony.

Q. About what time did you get to the job site?

A. About 7 o'clock, maybe a little bit before; it took roughly an hour to drive from Salyersville to the job.

Q. State what the situation was when you got there at the job site?

page 306 } A. We found a picket sign on a barrel or rock near the office, and I went over there and pulled the picket sign down and threw it over in the bushes.

Q. Was that a different picket sign than the one which has been introduced here?

A. Yes, that was another picket sign.

Q. Have you got that picket sign?

A. No. Unfortunately, I threw it over in the bushes and just didn't ever get it again. I looked for it afterwards. I forgot to get it again that day. I was busy doing other things. When I went back to the job site again, I couldn't find it.

Q. When the whole group arrived there at the job site, about how many of your men were there, altogether, would you say, that is, leaving out yourself and Mr. Delinger and Meli and Maynard Ragan?

A. About the same number as went; around 25.

Q. Then what did you do when you first got there, after you pulled down the picket sign and threw it over in the bushes?

A. There wasn't any picket line there.

Q. Let me interrupt you there one minute.

At any time during any of the period about which you have testified or will testify, were there ever any men walking a picket line?

page 307 } A. There never was a picket line.

Q. After you pulled the picket sign down, tell what you did.

A. I didn't put on overalls, because there wasn't any picket line. I did pull the picket sign down and threw it in the bushes. Then I said, "Come on, boys, let's go to work." So I led a group of about 7 or 8 men down to the tippie.

Q. How far was that?

A. Between 3 and 4 hundred yards.

Alexander Hamilton Bryan.

Q. All right, sir. When you got down there, did those men go to work? What did they do, and what did you do?

A. There were two men sitting on a pile of lumber, who were spotters for the United Construction Workers. The men went into the carpenters' shanty and got their tools, and some of them went on to work. I went back to the office, where there were some more men, and by that time Mr. Harvey J. Robinson, who was another field representative of District 50 and the United Construction Workers, had gotten to the job. Also, there were some men with Mr. Robinson. Mr. Monroe Sublet, the president of Local 646, was there. He was talking to Mr. Robinson. Some of our men had not gone down to the tippie. They seemed to be rather nervous.

I said, "Come on, let's go down to the tippie; I am not going to pay you for standing around," and the men
page 308 } wouldn't go. I asked them again to go.

Q. In the meantime, what about the men who were already down at the tippie, that you had taken down there?

A. They had gone to work, as far as I knew. I had left them and they had gone to work, and I had come back up to the tippie to get another batch of people. I couldn't persuade anybody else to go down there with me, so I went back to the tippie to see what was happening.

When I got there, I found that most of our men had stopped work, if not all, and they were gathered together in the carpenters' tool house.

Q. Let me interrupt you there one moment. At that time, was the tippie in operation? Were they putting coal through the tippie?

A. The tippie was running that morning. At that time, it was a 3-day week affair, but they were running then the first three days of the week.

Q. Did you have anything to do with the actual delivery and processing of coal in the tippie? Did Laburnum have anything to do with that?

A. No. Our men were putting siding up on the sides of the tippie, and were doing some final adjusting work in connection with it. The tippie was in operation.

Q. Was that operated by United Mine Workers?

A. Yes. The employees of Pond Creek were
page 309 } members of the United Mine Workers.

Q. Operating the tippie?

Alexander Hamilton Bryan.

A. Running the tippie and processing the coal.

Q. How high would you say that tippie was, from the ground up to the top where the coal was delivered into the tippie?

A. I would guess 100 feet, that is, from the top of the tippie to the ground. Where the coal came into the tippie, it wasn't that high, I don't think.

Q. I mean, about how high was it from the ground to where the coal came into the tippie?

A. It was a good ways up. I couldn't—

Q. If you were working up where coal came into the tippie, and I was working down near the ground, would it be difficult for you to drop a piece of coal on me?

A. No.

Q. When you got down there to see what the men were doing, what did you find the situation to be?

A. They were all coaggregated together in the tool house. I walked in, and the steward, Jack Patrick, was there. I said, "What's the matter, why aren't you working?" Jack Patrick said, "I am steward on the job."

Colonel Harris: We make objection and reserve an exception to all this line of testimony.

The Court: Objection is made to this question.

Mr. Robertson: I understand there is a con-
page 310 } tinuing objection to this line of testimony, Your Honor.

Colonel Harris: And a continuing exception.

The Court: There is a continuing exception.

The Witness: He said the job was unsafe, in his opinion; and that he had ordered the men to stop work.

By Mr. Robertson:

Q. Go ahead.

A. I said, "Why have you stopped work? You thought it was all right to go to work last night. What has changed your mind?"

He said some of the people up in the coal tippie had said they were sympathetic with the United Mine Workers, and that if these men knew what was good for them, they would get out; and if they didn't, there would be 100 men there within an hour to stop them.

Alexander Hamilton Bryan.

I said, "I don't see anybody except those two men sitting over there on a pile of lumber."

They said that I just didn't understand; that I was from the city and didn't know the ways of Eastern Kentucky; that they didn't want to be targets. Some of the men said they had their wives and children to think about. Some of the men said that they were afraid people would hide in the hills and shoot at them with a rifle, and that they had had enough; that they didn't want to work under those conditions, and nobody could make them. They weren't going to work; that it was too dangerous.

Q. What did you do then?

A. The men left and went on home. That was about 10:30 in the morning. Mr. Delinger and Mr. Meli and I went on back to Salyersville.

Q. About what time did you get to Salyersville?

A. Oh, 11:30 or a quarter of 12.

Q. Do you know a Kentucky police officer named Homer Howard?

A. After we got back to Salyersville we had lunch, and I was standing on the sidewalk in front of the Carpenter Hotel and this man was pointed out to me in a police officer's uniform, and said, "That is Homer Howard, a State Trooper." I was taken over there by Mr. Delinger and there introduced to Mr. Howard.

Q. Did you try to get Mr. Howard to go to the job site for police protection?

A. I talked to Mr. Howard and told him about what trouble we had had and asked him if he would go out there to the job site and try to help us out. I told him I would like to have State Troopers for protection, that even if we had but one, his presence at the job would help the morale of our men. I asked him to go.

Q. Did he consent to go or decline to go? Just say what he said to you and what you said to him.

A. Mr. Howard said he wouldn't go, that he had orders not to take part in any labor dispute except on express instructions from the Governor of Kentucky.

Q. Did you discuss with him the danger of anybody getting shot out there at the job site?

A. I did.

Q. State what the conversation was between you and him.

Alexander Hamilton Bryan.

Mr. Fred G. Pollard: Your Honor, I understand the continuing objection runs to this too.

The Court: Yes.

Mr. Robertson: We understand.

The Witness: I asked Mr. Howard if he thought there was any danger of our people being shot by persons hiding in the hills and using high-powered rifles, and Mr. Howard pulled up his pants leg or sleeve and showed me some of his own bullet wounds.

Q. Did he say whether or not he had been present at any shooting affairs in these circumstances?

A. He said he knew there was danger, that he had not only seen them shot but had picked them up after they were shot.

Q. Then did he show you the bullet scars where he had been shot himself?

A. Yes.

Q. Did he *ver* go to the job site, I mean for protection, during the period of time that we are talking about, as far as you know?

A. As far as I know he didn't.

Q. Did any other police officer go there as far as you know and give any protection?

page 314 } A. No.

Q. Did you and Mr. Meli go to Huntington that night or stay at Salyersville?

A. After we talked to Mr. Howard, Tony and I got in the truck and drove to Huntington.

Q. What happened to Mr. Delinger?

A. Mr. Delinger continued to stay in Salyersville. I gave instructions to him to keep his ear to the ground and to see if he couldn't get together some carpenters who wouldn't be afraid to work, and we would make another try at it the following morning, which would be August first.

Q. That was Wednesday night, July 27. Do you know a man named W. P. Freeman?

A. Yes, sir.

Q. Who is he?

A. He is an international representative for the International Brotherhood of Carpenters and Joiners, affiliated with the American Federation of Labor.

Q. Where were his headquarters in July, 1949, if you know?

Alexander Hamilton Bryan.

A. The United Brotherhood had its headquarters in Indianapolis. Mr. Freeman lived in Louisville.

Q. Did you have a telephone conversation with him during the day of Thursday, July 28?

A. Yes.

page 315 } Q. Where was he when you phoned him?

A. I was in Huntington and received a telephone call from Salyersville and talked to both Mr. Freeman and Mr. Delinger. I don't know which one placed the call, but it was a joint call.

Q. How did Mr. Freeman happen to be in Salyersville, if you know?

A. He was there to investigate the trouble.

Q. What was your telephone conversation with him?

A. I asked Mr. Freeman to please make every effort to get our carpenters to go back to work, that I would appreciate anything he could do to help us.

Q. Did he agree to make the effort or not?

A. Mr. Freeman said that he didn't blame our carpenters for not wanting to be targets, that it was too dangerous out there in his opinion, that is, in Breathitt County, and that neither he nor his union were going to require those men to go back to Breathitt County and expose themselves to danger.

Q. In that telephone conversation did he mention any threat that had been made against the life of Delinger, your man on the job?

Mr. Fred G. Pollard: Your Honor, does our objection still run to this line of testimony?

The Court: I understand it does.

Mr. Robertson: Yes.

page 316 } Mr. Fred G. Pollard: An exception?

The Court: An exception.

The Court will recess for five minutes. I would like to see counsel in my office.

(The following proceedings were had in Chambers:)

The Court: Gentlemen, I would like to hear from counsel for the defendants in regard to this line of questioning as far as hearsay is concerned.

Alexander Hamilton Bryan.

Mr. Mullen: I think it absolutely violates the rule of hearsay, Your Honor. I think it also violates Your Honor's ruling that he should not give specific and exact language as the result of reading the memorandum.

I would think in every way it violates the ruling. Take the last question. He is undertaking to ask something really third-hand. He is undertaking to ask what this representative of the A. F. of L. said somebody had told Delinger or said to Delinger.

Mr. Fred G. Pollard: That is fourth-hand.

Mr. Mullen: It is all through this. They have done exactly what Your Honor ruled they couldn't, namely, that they couldn't give the conversations. They have been giving them right along.

Mr. Robertson: If Your Honor please, this is not the first case I have tried where this thing has come up. My firm and I handled the matter in the trial before the National Labor Relations Board where there was a dispute between the Home Beneficial Life Insurance Company here in Richmond and an union, and that transcript ran to more than 3,000 pages. The taking of testimony consumed more than 30 days. The same arguments that they are making here came up time after time after time again. That case was carried right on up to the Supreme Court of the United States and the correctness of those rulings letting in the same sort of testimony that we are letting in here, was sustained by every court right on up through.

I was in charge of the injunction proceeding hearing in the Virginia Oak Leaf Tannery case at Luray, where Judge Crosby sat, and the same arguments that were made here were made everywhere through that case. You remember, that was a case where every device known to counsel was used to upset the rulings of the trial court. They forced Judge Ford to disqualify himself. They came before our court of appeals and sought a writ of prohibition to prevent Judge Crosby from sitting in the case. They tried to run me out of the case as counsel. Those things were all denied and the case was appealed to the Supreme Court of Virginia. All these points made here were made and all said the trial court had ruled correctly in a case of this sort. Then petition was presented to the Supreme Court of the United States and *certiorari* was denied.

Alexander Hamilton Bryan.

page 318 } I am not trying to evade or dodge any ruling of
the court. I am trying to comply with its rulings,
and I am trying at the same time to develop my case just as
fully as is permissible under the law.

The whole idea of this thing is that our men were intimidated
and threatened and put in fear illegally, and were illegally
run off the job. Whatever tends to show that, in my opinion,
is admissible in evidence, and whether it is true or not goes to
the weight of the evidence. What I gathered from Mr.
Mullen's opening statement was that that was his understand-
ing of the law when he announced what he was going to do.
He may have changed his theory, but I do what I am doing
advisedly. Of course, whatever wide latitude I follow, I throw
the door wide open for them. I think that under the brief that
we have filed here and under the law, just as I stated in there,
this evidence and this testimony is admissible because, one, as
to whether or not it is truthful, and two, and the real guts of
the whole thing, whether or not all these facts and circum-
stances tend to show that these men were put in fear and that
that was the reason they stopped, or—and here will be the
issue when their case goes in—or is this a mere pretext and
the work was quit because they were being chiseled on their
wages and that they were already striking and under the
etiquette between unions they wouldn't cross
page 319 } picket lines and that this whole thing about the
fear is a smoke screen to make out like something
existed that didn't exist.

That is my theory of this phase of the case, Your Honor,
and I am going to ask these two gentlemen here to continue.

The Court: Mr. Allen?

Mr. Allen: If Your Honor please, I think the testimony is
admissible upon the ground that it shows the state of mind of
these people and the state of mind of their superiors in the
union who control them. It isn't admissible necessarily to
prove particular facts, but evidence that is admissible on any
ground can't be kept out.

We have to prove a state of mind on the part of these
workers. We have got to prove a state of mind on the part of
those who control these workers, their superiors in the union
above them. I don't know how you are going to prove the
state of mind of anybody without proving utterances on the
subject that is pertinent. We have to prove that these people
through fear, intimidation, failed to go back there to work,
and if we fail to prove that, then our case goes out the window.

Alexander Hamilton Bryan.

How are we going to prove it? How are you going to prove the men were afraid unless you prove it by a statement that he is afraid? He didn't go back to work. They attribute that to something else. So you have to go into the page 320 } man's mind, as I see it, and I don't know any other way to get in his mind. You have got to go into the mind of the superiors in the union who control these men.

Even in criminal law when you have to go into the man's mind and prove what is in his mind, you can prove all sorts of utterances made by the man.

page 321 } The Court: Then you feel that these various conversations that Mr. Bryan has had with different people, quoting them is admissible as evidence?

Mr. Allen: That is right, sir. What would be the difference—there can't possibly be any objection to Mr. Bryan's using his imagination, his descriptive powers, so to speak, and describing the situation of fear. Then these gentlemen would come back on cross-examination and ask, "What did you base that on?" He would have to say that he based it on the utterances of the people. There is nothing else on earth that Mr. Bryan can base his testimony of fear and intimidation upon except the utterances of these people.

The Court: Mr. Moore?

Mr. Moore: I would just like to add that the Court ruled in a similar manner to the way Your Honor has ruled in this case, in the case of *Harkins v. United States*, that we cite in our trial brief, which was also a case involving fear and intimidation such as this, and the witness was allowed to testify to facts told him showing that fear and intimidation, along the same lines that Mr. Allen was just talking.

The Court: Mr. Harris?

Colonel Harris: May I add a word?

As I get this testimony, it is hearsay based on hearsay.

Mr. Bryan is testifying to what somebody else page 322 } told him as to what the men felt.

For the moment let us assume, and merely for the sake of argument, that they have to prove a state of mind. Then the proper way to prove it is not by hearsay, but to take the deposition of or put on the stand the man who has the state of mind. It seems to me that they are just throwing the rules of evidence behind them and paying no attention to them, in their effort to get all kinds of testimony before this jury.

As I see it, we can't throw away the rules of evidence. We have to go ahead on the accepted rules and the law that governs.

Alexander Hamilton Bryan.

Mr. Robertson: Judge, what is the difference—they have already put the Court and us on notice that they are going to tell about these United Construction Workers meetings, as I think they have a right to do, where none of the representatives of the Plaintiff were present, about what was said, the orders that were given, and this, that, and the other.

This man Freeman, for instance, which is the one we are talking about right now, is one of the high ranking men in the A. F. of L. I think it would be a very legitimate argument to say, "Why didn't you get in touch with some higher ranking man and ask him to order your men back to work?" The answer is that, "I was in touch with him and he page 323 } wouldn't order them back to work."

Mr. Mullen: That isn't what he asked. The last question was: "Did Mr. Freeman tell you that somebody had told Mr. Delinger that he was going to threaten them, or something of that kind?"

Mr. Robertson: No; wait a minute.

Mr. Mullen: Yes, that is your question.

Take another one that just occurred to me. "Did Mr. Jack Patrick tell them that somebody on the tippie told some of the men that they were in sympathy with the Mine Workers, and they were liable to get hurt if they went to work?" If that isn't third-hand hearsay, I don't know what is.

We don't know what the circumstances were in those cases that Mr. Robertson talked about. We don't know what the questions and the rulings were. They have given the substance of what happened in those meetings, and all that. They have gone now far afield, and have gone into what is clearly condemned by the laws of evidence.

Mr. Robertson: Just so the Court may know what I am developing, I don't remember the precise wording of the question, but I think I asked him: Here is Freeman out there investigating the situation, trying to ascertain the facts and trying to solve the difficulties. He goes and talks, as of course he should do, to Delinger, the superintendent in page 324 } charge of the job, and in the course of his talk with Delinger, Delinger tells him that his life has been threatened. If that isn't relevant, I don't know what is. That is what I am trying to develop, that came out in that telephone conversation. And when I get to Delinger, I am going to put Delinger on the stand and have Delinger testify how his life was threatened.

Mr. Mullen: There is another objection. You can't relate

Alexander Hamilton Bryan.

a telephone conversation unless you can identify that the man on the other end was the man he represented himself to be.

Mr. Robertson: Bryan said he knew him.

The Court: Do I understand you to say that these same points were passed on in the case that went to the Supreme Court of Appeals of Virginia?

Mr. Robertson: Yes.

Mr. Fred G. Pollard: What was the style of that case?

Mr. Robertson: Virginia Oak Leaf Tannery—that was an injunction case. There was no jury in that case. But the evidence was all admitted by Judge Crosby, and every ruling he made was upheld as substantially correct by the Supreme Court of Virginia, and a writ of *certiorari* was refused by the Supreme Court.

Mr. Mullen: Did you have third-hand conversation page 325 } tions in that?

Mr. Robertson: Yes.

Mr. Mullen: I think it would be advisable to get the case and see what is in it.

Mr. Robertson: There is a 3,000-page transcript in it, if you want to read it.

The Court: I will allow these gentlemen to continue, and it is understood that you all have the same objection and exceptions.

Mr. Fred G. Pollard: To all the testimony that has been made today?

The Court: The Court may rule differently later on, but I want to see how the case develops.

Colonel Harris: Judge, when you say "the same objection," some of this is hearsay and other is hearsay on hearsay, as Mr. Mullen said; it is hearsay thrice removed. We would want both those objections added.

Mr. Robertson: It is all right with me.

The Court: It is understood that you have done so. I just wanted to talk with you gentlemen about that point and hear some argument on it.

Mr. Robertson: We had it back and forth in all those other cases.

Mr. Mullen: We don't know what happened in those cases.

Colonel Harris: The decision wouldn't be 3,000 page 326 } pages long. Where is the decision?

Mr. Robertson: The decision would be very brief, because the writ of error was refused.

The Court: While we are in here, gentlemen, we might take

Alexander Hamilton Bryan.

care of this order that the Court indicated on yesterday it would enter today. This is an order allowing the filing of amended answer to Question 85 addressed to District 50, United Mine Workers of America, and amended answer of United Construction Workers to Question 83.

Mr. Lowden: I didn't check them both, but it looks as if in one of those there isn't any change that I could see. I looked at it about five times, and what the change is, I can't find.

Mr. Fred G. Pollard: That is correct, but I think it is immaterial whether we filed it or not, as to one of them. Since we have already filed it, we might as well leave it filed.

May I take up one other thing?

The Court: All right.

Mr. Fred G. Pollard: Yesterday, we filed an affidavit for a *supoena duces tecum*—

The Court: Is it necessary that that be passed on right now? Do you anticipate any argument on the proposition?

Mr. Fred G. Pollard: Just this, that the Plainpage 327 } tiff gave us a statement of what we wanted, through sometime in 1949, and we would like to have that brought up through 1950, and that would be satisfactory.

Mr. Robertson: I think if you look in that, it is brought up to '50.

Mr. Fred G. Pollard: No, sir, it is not.

Mr. Robertson: I will check that up. If it is not brought up, we will bring it up, of course.

Mr. Fred G. Pollard: Then I would like to file a further affidavit.

Mr. Robertson: Can we read it later?

Mr. Fred G. Pollard: Yes.

Mr. Robertson: Judge, I have my mind on this—

Mr. Fred G. Pollard: I just want you to have a copy of it.

Mr. Robertson: I will read it later.

The Court: I will enter this order.

(The following proceedings were had in open court.)

By Mr. Robertson:

Q. Mr. Bryan, in the course of that conversation with Mr. Freeman, did Mr. Delinger come to the phone?

A. Yes, he did.

Q. Did he make any statement to you about any threat against his own life?

Alexander Hamilton Bryan.

page 328 } A. I told him that I understood that his life had been threatened, and asked him if it was correct, and he told me what had occurred.

Q. What did he tell you had occurred?

A. That the night before, a prominent businessman in Salyersville had come to see him as an emissary on behalf of some other people, and delivered a message to Mr. Delinger that under no circumstances should he return to that job site after Sunday, July 31. If Mr. Delinger wanted to go out of Kentucky under his own power, he had better not go back to the job.

Q. After what date?

A. July 31, which was Sunday.

Q. Did Delinger tell you what he wanted to do about it?

A. He said he wanted to be relieved of all further duties, and to be replaced; that he didn't want to go back up there.

Q. What instructions did you give him?

A. I told him to report to our Richmond office and I would replace him.

Q. So far as you know, has Mr. Delinger ever been back to Kentucky since he left out there prior to July 31, 1949?

A. Let's see. That was on Thursday. Mr. Delinger went back to the job to get his clothes, and then he went
page 329 } back to Richmond. He has never been back since, so far as I know.

Q. That was on Thursday, July 28?

A. Yes, sir.

Q. Did you return to Richmond that night?

A. I went back to Salyersville, and then came back and went to Richmond that night.

Q. Why did you go back to Salyersville?

A. I was informed there was a storekeeper at Royalton, Kentucky, who might help us get some carpenters together who would go to work on Monday, August 1st. So Mr. Meli and I drove from Huntington, first over to Salyersville, where we saw Mr. Ragan and Mr. Delinger, and then we went to Royalton to find a storekeeper named Salyer. We couldn't find any storekeeper named Salyer, so we talked to a carpenter who had been working for us, named Homer Salyer. We told him about our plans to try to resume work on the following Monday, August 1st, and asked Homer Salyer to try to get together some carpenters.

Q. Did he agree that he would undertake to do that?

A. He said he wanted to go back to work, and that he would

Alexander Hamilton Bryan.

try to talk to some of the boys around Royalton and try to get them together for us.

Q. That would be to go to work Monday, August 1st?

A. That is right.

Q. Then after you had made that effort at page 330 } Royalton, did you go back to Huntington and catch a train back to Richmond that night?

A. Yes. Tony and I drove back to Huntington in a company truck. I took the train that night to Richmond. He drove the truck back.

Q. Where were you on Friday, July 29?

A. I had to come back and go over to the Solvay Process Plant in Hopewell, and of course, I was also in Richmond doing some things; and while in Richmond, I talked to Louis Veltry, who was another one of our superintendents, and told him that I wanted him to replace Mr. Delinger on the job in Kentucky, and please to be out there not later than Sunday, July 31.

Q. Where were you on Saturday, July 30?

A. I took a plane from Richmond about 7:00 o'clock and flew to Louisville, and was in conference with some lawyers out there about this trouble.

Q. While in Louisville, did you make any effort to get police protection at the job site?

A. I talked to them about it, and they advised that it was highly unlikely that any arrangements could be made.

Q. Where were you on Sunday, July 31?

A. After leaving Louisville, I drove with some lawyers over to Lexington, and there took a train and went to page 331 } Ashland, and spent the night; and took the 6:00 o'clock train the next morning out of Ashland for Paintsville. I arrived at Paintsville around 9:30 or 10:00.

Q. Where did you get breakfast in Paintsville that morning?

A. Mr. Ragan, our Chief Clerk, drove over from Salversville to get me, and took me first to the home of Henry Starr. He was the general carpenter foreman for us on the job.

Q. Did you eat breakfast with Ragan and Starr at Starr's home in Paintsville?

A. Henry Starr and his wife were eating breakfast, and they gave me some breakfast. Maynard Ragan had already eaten.

Q. Did you try to get Starr to go back to work the next morning, Monday?

A. I asked him to go back.

Alexander Hamilton Bryan.

Q. What was his reaction to that request?

A. He said he was afraid to do it, and he didn't think any of the other Paintsville carpenters would do it.

Q. Then after you finished breakfast, what did you do?

A. Mr. Ragan drove me to Salyersville, and then he had to leave. He and his wife were going some place.

Q. Do you know a man named Charlie Williams?

A. Charlie Williams is a contractor in Salyersville. I had met him out there, and I got to talking to him.

Q. After you got to Salyersville that Sunday—what time did you get out there to Salyersville?

A. I got in Salyersville about noon, 11:30.

Q. Then did you go from Salyersville to the job site?

A. I told Charlie Williams I wanted to go to the job site, but didn't have a car, and asked him if he could make arrangements for me to do it. He said he thought he could. So he got a fellow named May—I don't remember his first name—who was a carpenter and had worked for us. He asked Mr. May if he would drive out to the job site and take us. So we all went out there.

Q. At about what time did you get to the job site?

A. I think we left Salyersville about 1:00 o'clock and must have gotten to the job site about an hour later, around 2:00.

Q. Did you go to the schoolhouse when you got out there to the job site?

A. The first place we went was to the schoolhouse.

Q. Was there anybody there?

A. Nobody was there, but there was a picket sign.

Q. What happened to the picket sign?

A. I took the picket sign down and took it with me.

(Object exhibited to Mr. Mullen.)

page 333 } By Mr. Robertson:

Q. Is that the picket sign that you have mentioned?

A. (examining) Yes, sir.

Q. Read it out loud, please. What is written on it?

A. Faintly, in pencil: "District 50 UMW of A, Local 778-A—Picket Line." The word "picket" is again spelled with two "t's".

Mr. Robertson: I offer this picket sign in evidence, and ask that it be marked Plaintiff's Exhibit No. 24.

Alexander Hamilton Bryan.

(The sign referred to was marked Plaintiff's Exhibit No. 24 and received in evidence.)

(Jurors examining Plaintiff's Exhibit No. 24.)

By Mr. Robertson:

Q. Mr. Bryan, where did you go from the schoolhouse?

A. We went up toward the tippie and past our office.

Q. How far would you say it is, in fractions of a mile, from the schoolhouse to your office?

A. Between a mile and a quarter and a mile and a half.

Q. When you got to the office, was there anybody there?

A. We didn't see a soul at the job site at all. There was another picket sign at the office.

Q. What happened to that?

A. I took it down and took it with me.

(Object exhibited to Mr. Mullen.)

page 334 } By Mr. Robertson:

Q. Is that the picket sign which you took down there at the office that Sunday afternoon?

A. Yes, sir.

Q. Read it out loud, please.

A. It is a large multi-colored sign in red and black. The top line: "On Strike." The next line: "Local Union No. 778-A." The next line: "Carpenters." The next line: "Helpers and Laborers." "District 50 UMW of A."

Mr. Fred G. Pollard: He didn't read that entirely correct, Your Honor.

The Court: You may check it.

Mr. Fred G. Pollard: There is an arrow for "Carpenters" that brings it down in front of "Helpers," so it is "Carpenters Helpers." He read it as "Carpenters, Helpers and Laborers."

Mr. Robertson: I will introduce it in evidence.

He also didn't mention that it is on cardboard or that it is in crayon instead of an oil painting.

The Court: The jury will observe what it is.

Mr. Robertson: I offer the picket sign in evidence, and ask that it be marked Plaintiff's Exhibit No. 25.

(The sign referred to was marked Plaintiff's Exhibit No. 25 and received in evidence.)

Alexander Hamilton Bryan.

Mr. Robertson: I believe the jury can see this page 335 } if I hold it here, rather than passing it around.

(Plaintiff's Exhibit 25 shown to the jury.)

page 336 } By Mr. Robertson:

Q. After you had looked over the situation at your office, did you go on down to the tippie or not?

A. Yes, we went down to the tippie and walked all through it.

Q. And nobody was there?

A. I didn't see a soul.

Q. Then what did you do?

A. I got in the car and drove back to Salyersville. We drove back towards Salyersville, and on the way we passed a car headed in the opposite direction. We stopped and the other car stopped. In the other car was Robert Poe, business agent of the Salyersville Carpenters Local No. 697, and—let's see—Fred Howard was in the car and Elmer Howard. Either Elmer Howard or Ed Howard. I was told it was Elmer Howard, but afterward I learned it might have been Ed Howard. They were two brothers of Homer Howard, the State Trooper.

Q. Did you have any conversation with Robert Poe regarding the United Construction Workers meeting which had been held at Tiptop or Carver that day?

A. Mr. Poe said that he had just returned from a meeting at Tiptop, that there were about 250 persons present, that Mr. Hart had conducted the meeting, that at the meeting there was discussion about our work and the work of page 337 } the Codell Construction Company, which had also been stopped, and that arrangements were being made to have persons act as stewards at the job site the next day. Mr. Hart had made a speech and had called for volunteers for people to act as stewards.

Q. Did you make any arrangement that afternoon for Poe to come to the job site the next day in an effort to get the men to work?

A. Since the Pointsville Carpenters Local looked like it wouldn't do anything about supplying men, I turned to Robert Poe, the business agent of the Salyersville Carpenters Local and asked him to please get some carpenters, and Bob Poe said that he had made an effort in that direction and was trying to get some Breathitt County carpenters to go to report to work the next morning.

Alexander Hamilton Bryan.

Q. While you were with Charlie Williams during the day Sunday did you explain to him that Delinger was leaving and Veltry was going to replace him as superintendent on the job?

A. Yes, I did.

Q. Did you offer Charlie Williams any job as assistant to Veltry?

A. Yes, I told Mr. Williams that Mr. Delinger had gone back to Richmond and he was being replaced by Mr. Veltry. I asked Charlie Williams if he would like to be an assistant to Mr. Veltry.

Q. What response did you get from him?

A. He said he might take the job. He would like to think about it, though.

Q. Then after you left Robert Poe where did you go?

A. We went back to Salyersville. I just stayed around there, around the hotel that afternoon, and later on Charlie Williams came to see me and said he thought he had better not take the job. Then that night about 7:30 Louis Veltry got into Salyersville. He drove in in his truck.

Q. Did Charlie Williams tell you why he decided not to take the job?

A. He said it made his wife nervous.

Q. Did Tony Meli come back out to the area or did he stay in Richmond?

A. Tony came back. He left Richmond on the afternoon of Sunday, July 31, and drove a truck all night. He got to Salyersville about 5:30 the next morning, Monday, August first.

Q. Now state what happened on August 1, Monday morning.

A. Louis and I drove out in his truck together. As we passed through Royalton on the way to the job there were a number of men standing around, including Homer Salyer and Fred Howard. Homer Salyer got in the car with us and drove out. Fred Howard came along later with somebody else. We must have gotten to the job at about seven o'clock. At the job we found a number of carpenters standing around.

Q. Let me interrupt you one minute. When you got to the job had any picket signs been put up to replace the ones you had pulled down?

A. I didn't see any picket signs that morning.

Q. Was there anybody walking the picket line?

A. Oh, no. There never was any walking of picket lines.

Alexander Hamilton Bryan.

Q. All right, go ahead.

A. Some of the carpenters there were new. So we took them in to a barracks building which was across the road from the office to talk to them. Louis Veltry was a member of the Staten Island Carpenters Local and he asked these men if they were A. F. of L. carpenters and they all looked at each other's card and got to know each other. Then we sent these men from the barracks building one or two at a time over to the office, where Mr. Ragan would get them to make out history records and get them signed up so that they could start to work.

As time went on the men appeared to get nervous. They were in little groups. They seemed to want to go to work, and yet nobody wanted to take the lead. Mr. Veltry and I did our best to persuade them. They wanted a leader, as I said, and there wasn't anybody there. They wouldn't accept us. They were looking for a union man. Then they said they would like to wait until Robert Poe got to the job at about ten o'clock. They understood he would be there at ten, and they would like to wait until he appeared. So we decided we would wait until Mr. Poe arrived.

At about that time I placed a telephone call for Jack Joinville, the President of the Building Trades Council in Richmond, to make a report to him on what was happening. While I was talking to Mr. Joinville, I think Mr. Poe came at about ten o'clock with Mr. Patrick—that is the way it was—and Mr. Patrick was a man in the Salyersville Local. Whether he was an official or not I don't know, but anyway he was with Mr. Poe. Mr. Poe said that he thought he had some carpenters who would go to work and he would go out and talk to the men.

After that my call to Mr. Joinville came through, and at about that time Mr. Hart arrived on the job. I told Mr. Joinville about our trouble and asked Mr. Hart if he would like to speak to Mr. Joinville. So Mr. Hart got on the phone. Of course I didn't hear what Mr. Joinville said, but I did hear Mr. Hart tell Mr. Joinville that we couldn't do any more work unless we used United Construction Workers men.

Q. Did you have any conversation with Hart there at that time about the meeting that Poe had mentioned at Tiptop or Carver? Are Tiptop and Carver the same place?

A. I think so.

Q. Did you have any talk with Hart about the meeting there at Tiptop that Poe had mentioned to you the day before, on Sunday?

Alexander Hamilton Bryan.

A. Yes, we had quite a talk there. Apparently Mr. Hart had gotten word that we were making arrangements to go back to work, and he was very emphatic in his statements that we could not go back to work unless we recognized his organization and used his men. I told Mr. Hart that I understood that they had had a big meeting at Tiptop the day before, about 250, people and that he had made a speech to the meeting and made arrangements to have people act as stewards and to stop our job again. Mr. Hart said, yes, he had had that meeting and that he was in a position to get as many people as he needed to stop it.

Q. Was that a nice, even conversation with Hart, or did both of you get mad?

A. Well, at the time I talked to Hart about the meeting at Tiptop, I talked to him some outside the building, and I had quite a talk with him inside the building. While we had the discussion inside the building we got a little hot under the collar.

Q. Do you know a man named Thomas Davis?

A. I talked to Thomas Davis on the phone that day. What happened is that after I talked to Hart I placed
page 342 } a call for Jimmy Codell at Winchester, Kentucky,
to see what he was doing about his men, and through him I learned of Mr. Tommy Davis as being a person who had David Hunter's superior. I went out and asked Mr. Hart if he knew how I could reach Tommy Davis, and Mr. Hart went and got an official paper of District 50 and United Construction Workers and said that Tommy Davis' name was listed there and gave his address and telephone number, and said I could get him on the telephone.

(Document shown to Mr. Mullen.)

Mr. Robertson: I am going to introduce the whole thing, Mr. Mullen, and call attention to the place where it shows Hart's telephone number. That is the only part that is relevant.

Mr. Mullen: If Your Honor please, if the only part relevant is the telephone number, it is improper to put in a whole newspaper in evidence in the record.

Mr. Robertson: If Your Honor please, I brought it here—of course if I had brought one sheet they would have said that looked might fishy. I will just get him to read the relevant part of it and won't offer it if they object.

Mr. Mullen: That will be all right.

Alexander Hamilton Bryan.

By Mr. Robertson:

Q. Is that the paper that Mr. Hart gave you?

A. Yes, it is a paper entitled "The News, of-page 343 } ficial publication of District 50 and United Construction Workers, UMW of A," between the word "The" and the word "News" there is a seal, "United Mine Workers of America, organized January 25-90," which is the abbreviation for 1890.

Q. What is the date of that issue?

A. Volume 2, No. 14, dated July 20, 1949.

He handed me this whole newspaper.

Mr. Robertson: Do you object to the first page going into the record to show what it is? I would rather leave it out than wait for you to read it all. I haven't read what is on the first page. I would rather forego introducing it than to read it.

Mr. Mullen: No, I don't mind the first page going in.

Mr. Robertson: We will tear that off, then.

The Court: Do you want to introduce that in evidence?

Mr. Robertson: I will introduce the two pages together as one exhibit, Your Honor.

By Mr. Robertson:

Q. I call your attention to page 9 of that issue of the News and ask you what that is entitled.

A. Page 9 is a statement of names and addresses under the heading "Addresses of our regional offices." Then there is a list of numbers under the word "Region," there being three columns of those, and opposite each number for page 344 } the region there is the name of a town and the name of a man, with his address and telephone number.

Q. Does it give the name and telephone number of Thomas Davis?

A. I will have to find it here. Just a minute (examining document). Opposite Region 31 there are the following words: "Kingsport, Tennessee"—I am sorry. Take that out. "Knoxville, Tennessee, Thomas Davis, 932 North Central Avenue, Telephone 3-4195."

Mr. Robertson: Do you object to that page?

Mr. Mullen: No.

Mr. Robertson: I offer page 1 of that issue of The News

Alexander Hamilton Bryan.

and page 2, the back of it, page 9 and page 10 and ask that they together be marked Plaintiff's Exhibit No. 26.

(The document referred to was marked Plaintiff's Exhibit 26 and received in evidence.)

By Mr. Robertson:

Q. What was Mr. Thomas Davis' connection? What is his union affiliation, if you know?

A. He is the regional director of Region 31 of the United Construction Workers, and District 50 of the United Mine Workers of America, with headquarters in Knoxville, Tennessee. Mr. Davis is also one of four assistant chairman to Mr. Denny Lewis, Chairman of the Organizing Committee of District 50.

page 345 } Q. What is his function as one of the assistant chairmen of the Organizing Committee of District 50?

A. He acts as a coordinator of regions in the southeast, including Region 58.

Q. Does that include Breathitt County, Kentucky?

A. Mr. Hunter said it did.

Q. Is Thomas Davis the boss of David Hunter?

A. He was described to me as being David Hunter's superior in the organization.

Q. Did you succeed in getting Thomas Davis on the telephone that Monday morning from the job site?

A. I called Mr. Davis at Knoxville and found that he was over at Kingsport, Tennessee. The call was transferred there, and I got him.

Q. What was your conversation with him?

A. I told Mr. Davis that I had a talk with Jimmy Codell, whose work had been stopped by these same people, and that Jimmy Codell had told me that Mr. Davis was going to issue instructions to David Hunter and to Mr. Hart not to interfere with our employees, meaning his employees and the employees of Laburnum. I asked Mr. Davis if he wouldn't tell Mr. Hunter and Mr. Hart to leave us alone. Mr. Davis said he wouldn't do that. I said, "We already are working A. F. of L. labor, organized labor. We have agreements with A. F. of L. unions." Mr. Davis said, "We don't recognize the A. F. of L."

page 346 } I told Mr. Davis the A. F. of L. is a pretty big organization. Mr. Davis said, "and so are we." He said,

Alexander Hamilton Bryan.

"We don't recognize the A. F. of L. any more than they recognize us."

Then Mr. Davis said that he felt sorry for people in our position, that we were just being caught in a fit between two big unions.

I told Mr. Davis that I was trying—that it occurred to me that it might be a good idea to have a meeting between some A. F. of L. officials and officials of the United Mine Workers and the United Construction Workers, and Mr. Davis said that he thought that was a good idea. I asked him if he couldn't meet me over in Salyersville the next day. He said he was busy and couldn't do it. He said it was a good idea to have the meeting and that he thought that I ought to invite David Hunter to come. I said I would try to do that. That is as far as I got with Mr. Davis.

Q. After you had that conversation with Thomas Davis, did you talk to Hart about the proposed meeting at Salyersville the next day?

A. Hart was sitting out in the bushes with some men, and I went outside and told him that I had just finished talking to Tommy Davis and that I was going to call some A. F. of L. people in Lexington and ask them to come over to Salyersville for me the next day at the Carpenter Hotel, page 347 } at ten o'clock, and that Mr. Davis had suggested that Mr. Hunter be invited to come to the meeting, that I would like to have him come. I told Hart I wanted him to come. I said "We will all get together here and see what we can do."

Mr. Hart said that he would come and that he would give the message to Mr. Hunter. I did not telephone Mr. Hunter, but relied on Mr. Hart to get the message to him.

Q. What was the upshot there that morning of Poe's efforts to get the men to go to work?

A. Robert Poe came back in the office and said that he thought that some of his men would go to work that afternoon after lunch or the next morning. I told him that we would like to start signing the men up. I asked Mr. Poe if he had some people who were capable of acting as Carpenter foremen. He wanted to know how many foremen we needed and I told him we wanted about three, depending on the number of men we had. He said that he would go out and talk to the men again.

After that, Mr. Poe came back and said that the men had taken another vote and that they didn't want to go to work and that he didn't think he could get his men to go to work

Alexander Hamilton Bryan.

until after the trouble with the United Construction Workers was straightened.

Mr. Hart at the job that day left no doubt in anybody's mind that he was going to have people to stop any men from working who tried. For the first time that morn-
page 348 } ing he said that if we would recognize them for the laborers, we would work.

Q. Did he say anything about what he was going to do if you declined to recognize his union and use United Construction Workers Labor—what he was going to do then if you worked other men?

A. Before July first he had always taken the position with all of our men—

Q. You say July first?

A. I mean before August first it had always been his position that all of our people would have to become members of the United Construction Workers. At the meeting—when I talked to him on August first he then said that if we would recognize them for the laborers, others could work, but that if we didn't nobody could work.

The Court: Gentlemen, at this point let us recess for five minutes.

(Brief recess.)

By Mr. Robertson:

Q. Mr. Bryan, after the men finally decided that they would not go to work on Monday, August first, did you go through with your arrangements for the meeting you have mentioned at Salyersville for the next morning, Tuesday, August 2? I don't think it is necessary to go through the details of everybody you called up and everything, but did you
page 349 } arrange the meeting?

A. Yes. I called Lexington and asked for the business agent of the laborers local, if he couldn't come over and bring as many A. F. of L. officials and representatives with him as he could.

Q. Did the meeting take place as planned on Tuesday, August 2, at the Carpenter Hotel in Salyersville?

A. Yes, it did.

Q. Did Mr. Thomas Davis come to the meeting?

A. No.

Q. Did Mr. David Hunter come to the meeting?

A. No.

Alexander Hamilton Bryan.

Q. Did Mr. Hart come to Salyersville and make himself available for the meeting if wanted?

A. Yes, he came and was outside the Carpenter Hotel. He said he would come in any time we wanted to see him.

Q. Have you got a record of who attended that meeting?

A. Yes, sir.

Mr. Robertson: I ask that the witness be permitted just to state from that who was there. I don't think he can possibly remember it without referring to his records.

By Mr. Robertson:

Q. Refer to your records, please, and state who was at the meeting and what their official capacities were.

A. John Humphrey, Business Agent, Labor-page 350 } ers Local Union 189, Lexington.

Q. Virginia?

A. Kentucky.

James Lockhart, Consultant and Conciliator, Laborers International Union.

C. M. Deatherage, Business Agent, Plumbers and Fitters Local Union No. 452, Lexington, Kentucky.

Joseph S. Daly, Business Agent, Painters Local Union No. 768, Lexington, Kentucky.

Buryl Travis, Business Agent, Operating Engineers Local Union No. 181, Lexington, Kentucky.

J. Roger Jones, Assistant Business Agent, Electricians Local Union 183, Lexington, Kentucky.

W. P. Freeman, International Representative of the United Brotherhood of Carpenters and Joiners, Indianapolis, Indiana.

R. T. Baxter, President, Building Trades Council, Lexington, Kentucky.

Robert Poe, Business Agent, Carpenters Local Union No. 697, Salyersville, Kentucky.

Henry N. Arnett, President, Carpenters Local Union No. 697, Salyersville, Kentucky.

B. E. Preston, Carpenters Local Union No. 646, Paintsville, Kentucky.

P. L. Trumble, Vice President, Carpenters Local Union No. 646, Paintsville, Kentucky.

C. H. Patrick, Carpenter Foreman, being a page 351 } member of Local Union No. 646, Paintsville.

M. F. Sublett, President, Carpenters Local Union No. 646, Paintsville, Kentucky.

Alexander Hamilton Bryan.

Representing us were: Mr. Meli, Mr. Veltry, and myself.

Q. Now, Mr. Bryan, tell us what happened at that meeting. Just as you have described the other meeting that happened on the night of the 26th at Paintsville, will you tell us what happened at this meeting?

A. The meeting lasted for about two hours. We discussed the whole situation, and Mr. Freeman, Mr. Baxter—was the president of the building Trades Council in Lexington—thought that we ought to take steps to bring an injunction suit. That matter was discussed. I told them—

Colonel Harris: May I interpose an additional objection. I don't think we have. That is immateriality, and relating the conduct of third persons who are in no ways connected with any of the defendants and for whose statement or conduct none of the defendants is responsible.

The Court: Very well.

Colonel Harris: Also, as Mr. Pollard suggests, on the grounds that it is unauthorized expression of opinion.

The Court: Very well.

Colonel Harris: May we have that as a continuing objection?

page 352 { The Court: That will be included in your objection and exception, yes, sir.

By Mr. Robertson:

A. All right, go ahead, Mr. Bryan.

A. I pointed out that we used A. F. of L. men on all of our jobs and had agreements with A. F. of L. unions, that I thought the men ought to go back to work.

Mr. Freeman wanted to know why I didn't do anything about it to stop the trouble. I said I had done everything that I could do. Then he said, "What do you want, do you want somebody to be killed before you do something, before you try to bring an injunction?"

The result was that they just said it was too dangerous out there and they were not going to advise their men to go back to work. I told them if they wouldn't get men to go back to work I would try to get other men to go back to work. Then after the meeting had been in progress for about 45 minutes I found that Mr. Hart was there, outside. So I asked the crowd, the group, if they would like to talk to Mr. Hart. They went into a kitchen—we were seated in the dining room at the Hotel. They went back into the kitchen and talked. They

Alexander Hamilton Bryan.

came back and said they had no business to talk to Mr. Hart about.

After that I went outside to see Mr. Hart and told him what the A. F. of L. business agents had said, and Mr. page 353 } Hart said he didn't have anything to talk to them about. I told Mr. Hart I was sorry that I had wasted his time.

By Mr. Robertson:

Q. Did Hart say his position regarding whether you could or could not work there was the same or different from what it had been?

A. He said his position was unchanged, that we could not go to work out there again unless we recognized United Construction Workers and made an agreement with the United Construction Workers and used his men, that if necessary he would bring a thousand men there and hold a picket line.

Q. After the meeting was over there on August 2 did you return to Huntington?

A. Yes. Mr. Meli and I drove back to Huntington. •

Q. Did you report the results of your efforts to get the men back to work to the Island Creek Coal people and the Pond Creek Pocahontas Company people and the Spring Fork Development Company?

A. Yes. I told them everything that had happened, what I had tried to do to get the men to go back to work, and about the conversations and about the meeting at the Carpenter Hotel in Salyersville.

Q. I forgot to ask you one question: When you talked to Hart there at Salyersville at the time of the meeting on August 2 did he say anything about closing down the page 354 } Pocahontas Mine operation if necessary to keep your men off the job?

A. Yes, he did. He said that if we went back to work he was going to close down the mine operations by stopping the United Mine Workers men from working for Pond Creek.

Q. Did you report the whole situation to the three companies that I have mentioned?

A. You mean Pond Creek Pocahontas Company, Island Creek—

Q. Yes.

A. Yes, I made as full a statement as I could. I felt that I should do it.

Q. Do you remember whether you made that report to them on August 2 or on August 3?

Alexander Hamilton Bryan.

It was on August 3 because we didn't get back to Huntington until well along into the afternoon of August 2. I spent the night there and then went over to the Pond Creek offices the next morning.

Q. In consequence of what you told them about your inability to get men back on the job, what action, if any, did they take on your contracts for the work there at the job site?

Colonel Harris: We object to that on the additional ground that it calls for an unauthorized opinion of this witness. He uses the phrase in the question "in consequence of" and this witness wouldn't be the one to tell the motives, page 355 } but it would be the people who took the action.

The Court: You can ask the question whether he did get a reply to his report.

Mr. Robertson: Yes, sir.

By Mr. Robertson:

Q. After you told them that did you get any reply from them verbally to your report?

A. I was told that a Mr. Foster, a labor relations man for Pond Creek and Island Creek was down in Mingo County and would not be back until the afternoon, and that they wanted to talk to him about it. Later on in the afternoon I was told by representatives of Pond Creek and Island Creek that the situation out in Breathitt County had become so tense that they wanted to stop our work.

Q. When they gave you that—

A. That they were going to stop our work.

Q. When they gave you that information what instructions, if any, did you give Veltry as to what he should do?

A. I called Louis up after that and told him—

The Court: Louis who?

The Witness: Veltry.

—that Pond Creek had said they were going to stop our job, stop our work. I said I wanted a letter, that they had a right to terminate the contract if they wanted to, but I wanted a letter doing it and they said they would page 356 } give it to me the next day. I told Louis to try to get some men to get together the tools and equipment so that they could be moved to Richmond.

(Document exhibited to Mr. Mullen and Colonel Harris.)

Alexander Hamilton Bryan.

Colonel Harris: We want to add the additional ground to this letter that it is a self-serving declaration invited by the *alter ego* of the plaintiff subsequent to the alleged commission of the wrongs complained of.

The Court: Let the record show that objection and exception.

Colonel Harris: That is in addition to all the other grounds of hearsay of course.

The Court: Very well.

Mr. Robertson: I seem to have misplaced the original. I will use a copy.

The Court: Isn't the original attached to the notice of motion for judgment?

Mr. Robertson: No. I think Mr. Bryan gave me the original this morning with a photostat attached to it. I can use a copy and substitute the original later just to keep from delaying the proceedings.

Mr. Mullen: We don't raise any question about the copies, Your Honor.

The Court: All right.

page 357 } By Mr. Robertson:

Q. Is that the letter that Pond Creek Pocahontas Company wrote you that you have mentioned?

A. It is a letter dated August 4, 1949, from Pond Creek Pocahontas Company to Laburnum Construction Corporation, signed by Mr. R. E. Salvati, President.

Mr. Robertson: I offer this letter in evidence and ask that it be marked Plaintiff's Exhibit 27, and I will substitute the original.

Colonel Harris: May we have the same objection and a continuing objection and exception to all documents *long* this line?

The Court: That is understood.

(The letter referred to was marked Plaintiff's Exhibit 27 and received in evidence.)

Mr. Robertson: If Your Honor please, I would like to read this letter to the jury. Pond Creek Pocahontas Company, Huntington, West Virginia, R. E. Salvati, President, August 4, 1949, Laburnum Construction Corporation Richmond, Virginia, attention Mr. Hamilton Bryan, President.

Alexander Hamilton Bryan.

"Gentlemen:

"Please refer to Article 6 in our construction agreement with you dated October 28, 1948, covering the construction of a coal preparation plant at our No. 1 Mine in Breathitt County, Kentucky.

page 385 } "About noon on July 26, 1949, we understand that your men were prevented from continuing to work on the tippie by threats and other action of representatives of the United Construction Workers, a branch of District 50 of the United Mine Workers of America. Since that time, no further work has been done on the tippie.

"I am sure that you realize that it is necessary for us to complete the construction of the tippie at the earliest practicable date. Therefore, under the provisions of Article 6 above referred to, you are hereby notified that said contract and your employment thereunder is terminated. It will be appreciated if you will remove all your tools and equipment from the site of the work at the earliest practicable date.

"Yours very truly, Pond Creek Pocahontas Company, by R. E. Salvati, President."

By Mr. Robertson:

Q. Did you reply to that letter on the same date?

A. Yes, I did.

Q. I hand you what appears to be a carbon copy of your reply and ask you if that is your reply?

A. Yes, sir; this is the reply from us to Pond Creek Pocahontas Company dated August 4, 1949, signed by me.

Mr. Robertson: I offer the reply in evidence and ask that it be marked Plaintiff's Exhibit No. 28.

page 359 } (The letter referred to was marked Plaintiff's Exhibit 28 and received in evidence.)

Mr. Robertson: August 4, 1949. Pond Creek Pocahontas Company, Guaranty Bank Building, Huntington, West Virginia Mr. R. E. Salvati, President.

"Gentlemen:

"Receipt is acknowledged of your letter dated August 4, 1949, referring to Article 6 of our construction agreement with you dated October 28, 1948, covering the construction of a coal preparation plant at your No. 1 Mine in Breathitt County, Kentucky.

Alexander Hamilton Bryan.

"In the last paragraph of your letter, you notified us that the contract and our employment thereunder was terminated, all in accordance with the provisions of Article 6.

"While you did not give us ten days' written notice to terminate the contract as provided in Article 6, we hereby advise that we waive this requirement.

"In accordance with your request, we will remove our tools and equipment from the site of the work as promptly as possible. It will be necessary, of course, for us to employ certain persons to accomplish this and we understand that you will reimburse us for this cost.

"We sincerely regret that the threats and other action of representatives of the United Construction Work-
page 360 } ers, a branch of District 50 of the United Mines
Workers of America, have prevented us from continuing work under the contract. As you know, this has been most embarrassing to us.

"We greatly appreciate the many courtesies which you and your representatives have shown to us in connection with our work for you in Breathitt County.

"Sincerely yours, Laburnum Construction Corporation, by
A. Hamilton Bryan, President."

page 361 } By Mr. Robertson:

Q. Mr. Bryan, on August 4, 1949, did you receive a letter from the Spring Fork Development Company through its president, W. A. Ogg, substantially in the form of the letter you have already read from Pond Creek Poca-hontas Company, the letter from Spring Fork Development Company also terminating its contract?

A. Yes. This is a letter from Spring Fork Development Company to us, dated August 4, 1949, terminating our contract for the 25 dwellings.

Mr. Robertson: I offer the letter in evidence, and ask that it be marked Plaintiff's Exhibit No. 29.

(The letter referred to was marked Plaintiff's Exhibit No. 29 and received in evidence.)

Mr. Robertson: I don't think it is necessary to read that letter, because it is the same as the other one.

By Mr. Robertson:

Q. On August 4, did you reply to that letter substantially

Alexander Hamilton Bryan.

as you replied to the letter you received from Pond Creek Pocahontas Company?

A. Yes, sir.

Q. I hand you what appears to be your reply to the Spring Fork Development Company, and ask you if that is a copy of your reply?

A. Yes, this is a copy of our reply to Spring page 362 } Fork Development Company, dated August 4, 1949.

Mr. Robertson: I offer the reply in evidence, and ask that it be marked Plaintiff's Exhibit No. 30.

(The letter referred to was marked Plaintiff's Exhibit No. 30 and received in evidence.)

By Mr. Robertson:

Q. Mr. Bryan, when the Pond Creek Pocahontas Company and the Spring Fork Development Company told you on August 3 that they were going to cancel your contract, and you required them to give you a letter to that effect, did you stay there in Huntington until you got the letter, or did you come on back to Richmond and get the letter later?

A. No, I stayed in Huntington.

Q. And got the letter while you were in Huntington?

A. On August 4.

Q. And replied to it while you were in Huntington on August 4?

A. That is right. I wanted to be sure they were going to pay us for moving our tools out.

Colonel Harris: We move to exclude that answer as not responsive to any question, if the Court please.

The Court: Gentlemen, disregard the answer. It was not responsive to the question.

Mr. Robertson: If Your Honor please, of course, I know he has a right to say that, but that is utterly trivial.

page 363 } By Mr. Robertson:

Q. Why did you stay in Huntington?

A. I wanted to be sure to get the letter, and I wanted to be sure to have it understood that they would reimburse us for the cost of moving our tools and equipment away.

Q. What instructions, if any, did you give your new super-

Alexander Hamilton Bryan.

intendent, Veltry, about getting your tools and equipment off the job?

A. I told him to get together some men and make arrangements to have railroad cars come in to get the guide derrick, and the cots and blankets and stoves, and saws, and all the rest of the stuff we had out there, together, and send it back to Richmond.

Q. Did Veltry move out, pursuant to your instructions?

A. Yes. He hired some carpenters. He had two iron workers, four or five carpenters. He had a half a dozen or so laborers who had worked for us before.

Q. Did he report to you whether the United Construction Workers, or any of the defendants, made any objection to those men working?

A. Yes. A couple of days after he started to move the equipment out, he said that a representative of the United Construction Workers had told him he couldn't do that. Mr. Veltry protested, and said that surely no objection would be made to Laburnum moving its tools and equipment away. He said he never heard any more.

Q. On August 5, did you go to Pikeville, Kentucky, and have a conference with David Hunter?

A. I was in Huntington on August 5, and telephoned Mr. David Hunter at about 1:00 o'clock. Mr. Hunter was in Pikesville. I asked Mr. Hunter if he could see me that afternoon or the next morning. Mr. Hunter said that the next day, August 6, he had to go to Winchester, Kentucky, to see Jimmy Codell, but that he would see that afternoon. He said that if I left Huntington at about 1:30, I ought to be able to get to Pikesville around 4:30, and he would wait for me and I could see him in his office?

Q. Did you go to Pikesville and see him?

A. Yes. I went to Pikesville and got there at approximately 4:30.

Q. I am going to ask you what building his office was in?

A. His office was in the Soward Building in Pikesville. It is spelled S-o-w-a-r-d, I think.

Q. Do you know whether the United Mine Workers of America maintain an office in that same building?

A. At that time, the office of District 50 and United Construction Workers was on the third floor of the Soward Building, and the office of United Mine Workers was on the second floor. At the present time the offices are in the same building and are all on the second floor.

The United Mine Workers' offices are in the

Alexander Hamilton Bryan.

front of the building, and immediately next to those offices is the office of Mr. Hunter, District 50, and United Construction Workers.

Q. State what occurred when you had your meeting there on August 5 with Mr. Hunter? How long did the meeting last, approximately?

A. The meeting lasted from about 4:30 to almost 8:00 o'clock.

Q. Now, just tell what you said to him and what he said to you and what happened during the meeting.

A. I will have to refer to this memo a little bit on that. It was a right long conference.

I told Mr. Hunter that we always had dealt with A. F. of L. unions, and had never had any agreements with the United Construction Workers. It seemed to me that the United Construction Workers was organized somewhat differently from the A. F. of L. unions. I asked him if he would explain to me about the United Construction Workers, and how it operated. I asked Mr. Hunter if it was correct that the United Construction Workers was a part of the United Mine Workers of America. Mr. Hunter said that it was.

I then asked Mr. Hunter to explain to me how the United Construction Workers was connected with the
page 366 } United Mine Workers of America and District 50,
what the set-up was.

Mr. Hunter proceeded to do that. I was asking him questions from time to time about it.

Q. Just go ahead and give what his explanation was of the set-up.

A. Mr. Hunter said that the United Mine Workers of America was an organization that consisted of 31 groups or divisions known as districts, in connection with coal; and also of another group or division, known as District 50, in connection with everything except coal. He said that United Construction Workers was a part of District 50 which handled the construction business. Mr. Hunter said that John L. Lewis was the International President of the United Mine Workers of America, and of all its districts, including District 50, and that under John L. Lewis there was an Executive Board or Policy Committee. Some of the information, I might add, that Mr. Hunter gave, I don't think is exactly accurate, but I am telling you what he said.

Mr. Hunter said that on the International Executive Board were the Chairman of various districts. He said that Mr. A. D. Lewis was the brother of John L. Lewis, and that he

Alexander Hamilton Bryan.

was the Chairman of the Organizing Committee of District 50; that Mr. A. D. Lewis was on the International Executive Board.

Mr. Hunter said there was a man in Pikesville page 367 } named Tom Raney connected with the coal handling districts, who also was on the International Executive Board. He said that there was a Comptroller, a man named Mr. O. B. Allen, who was the Comptroller of District 50.

I don't remember whether he said Mr. Allen was on the Executive Board or not.

Mr. Hunter said that under Mr. A. D. Lewis, as Chairman of the Organizing Committee of District 50, were four Assistant Chairmen. He gave me their names.

Q. Do you have the names there?

A. Yes.

Q. Give them, please.

A. Thomas Davis, Frank Barnhart, a Mr. Moffet—I didn't get his first name—and a Mr. Brett.

During my talk with Mr. Hunter, I was making notes continually.

He said that Mr. Davis was the Assistant Chairman serving as coordinator of the various regions in the Southeast. He said that he, that is, Mr. Hunter, as the Regional Director of District 50, and United Construction Workers of Region 58, worked under Mr. Davis. He said that Region 58 comprised two counties in West Virginia, Logan and Mingo Counties; two counties in Virginia, Wise and Buchanan; and ten counties in Kentucky, Breathitt County and nine others.

Mr. Hunter said that as the Regional Director page 368 } of Region 58, he had charge of all activities of District 50 and the United Construction Workers in Region 58.

Mr. Hunter said that in a United Construction Workers local union, the construction people were usually by themselves, but that this was not always true; that sometimes they would have barbers and taxicab drivers, laundry employees, and other people, in a union with construction men.

Q. Let me interrupt you there a minute. Did Mr. Hunter say whether or not William O. Hart and this man Robinson were field representatives working under his orders?

A. Yes, I think he did a little later on.

Q. All right, sir. Go ahead.

A. I asked Mr. Hunter about the wage rates for construction people, and whether or not the barbers and taxicab

Alexander Hamilton Bryan.

drivers would have anything to say about the wage rates for carpenters; and he said that no, on that phase of it, it was separate.

Mr. Robertson: If Your Honor please, if I may break in now, I have found the original letter.

The Court: You may do that afterwards, when we recess for lunch.

By Mr. Robertson:

Q. When you entered into these discussions of wage rates and contracts, did Mr. Hunter turn over any data to you?

A. Yes, sir. I asked Mr. Hunter if he would
page 369 } let me see a copy of the form of agreement which
was used by the United Construction Workers
with contractors. Mr. Hunter gave me a copy of the form, and
I read it aloud, paragraph by paragraph, with him. We
discussed the various paragraphs.

Q. Did he also give you, with that, a list showing various
classifications of employees and the form of a membership
application card, and a recognition agreement, and tabulation
of wage rates (exhibiting document to Mr. Mullen)?

Mr. Mullen: No objection.

By Mr. Robertson:

Q. Did he turn over to you various data while you were
there in his office?

A. Yes. He gave me a conformed copy of the agreement
which he used with contractors. He gave me a copy of a mem-
bership application form and check-off authorization used in
connection with United Construction Workers. He gave me
a form of agreement which he asked contractors to sign, and
other people to sign, recognizing the United Construction
Workers as the bargaining agent for employees pending the
execution of a more formal agreement.

He also gave me a copy of the construction wage rates
used by United Construction Workers in Region 58.

Q. Is the data which I have handed to you collectively, the
data which he gave you there that afternoon and evening?

A. It is, with this exception: Mr. Hunter also
page 370 } gave me a copy of the Rules of District 50, re-
vised March 15, 1949, but with that exception this
is what it was.

Q. Were the Rules that he gave you of District 50, a copy

A. Hamilton Bryan.

of the same rules that have been introduced in evidence here as an exhibit?

A. I haven't compared them word for word, but I assume that they are. Both of them were dated "Revised March 15, 1949."

Mr. Robertson: I offer all of the data which Mr. Bryan has mentioned, with the exception of those Rules, in evidence, and ask that it collectively be marked Plaintiff's Exhibit No. 31.

(The documents referred to were marked Plaintiff's Exhibit No. 31 and received in evidence.)

Mr. Robertson: Judge, I am sorry, but I am going to have to go through this data in great detail.

The Court: I think we had better have something to eat. We will recess, gentlemen, for lunch, and be back at 2:15.

(Whereupon, at 12:50 o'clock p. m., a recess was taken until 2:15 o'clock p. m., of the same day.)

page 371 } AFTERNOON SESSION.

2:15 p. m.

Whereupon,

A. HAMILTON BRYAN

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

DIRECT EXAMINATION—continued.

By Mr. Robertson:

Q. Mr. Bryan, there is a question I failed to ask you before lunch. You stated when you and Hart were at the job site on Monday, August first, you were discussing the proposed meeting for the next day at Salyersville and you asked him would he come to the meeting. Did he make any condition about coming as to whether you would work or not work if he came?

A. Mr. Hart said that he would come to the meeting but that he wanted it understood that we would not attempt to perform any more work until after the meeting.

A. Hamilton Bryan.

Q. Did you accept that condition?

A. I said we would not try to perform any more work. I knew we couldn't, actually.

Q. I will give you back this data which has been introduced here as Plaintiff's Exhibit No. 31. When we adjourned for lunch you were discussing Mr. Hunter's explanation to you of the organization of the three defendant unions.
page 372 } Will you take up where you were discussing that and continue your discussion of what he told you there and what happened in that conference?

A. When we adjourned for lunch I think that I had just said that Mr. Hunter gave me a mimeographed copy of a form of agreement which was used by United Construction Workers in making agreements with contractors in Region 58. The agreement or form of agreement that Mr. Hunter gave to me has been offered in evidence. I discussed the form of agreement with Mr. Hunter extensively. In fact, the agreement was read aloud paragraph by paragraph and we discussed different portions of it. Mr. Hunter showed to me an executed copy of the agreement which United Construction Workers had made with the Beckett Construction Company of Huntington, West Virginia, dated in June, I believe, June 20, 1949. The agreement was executed by Beckett Construction Company, had been signed by Mr. Hunter as regional director on behalf of the United Construction Workers and had also been signed by Mr. Denny Lewis to indicate the approval of the National organization. The agreement signed with the Beckett Construction Company was very similar to the form of agreement which Mr. Hunter gave to me except that the agreement with the Beckett Construction Company contained a "no-strike" clause and also contained a no-suit clause. In other words, the contractor agreed not to bring any sort of suit against United Construction
page 373 } Workers.

Mr. Hunter and I then discussed the matter of the wage rate of \$1.36 an hour for laborers in Breathitt County. I told Mr. Hunter that in my judgment the wage rate of \$1.36 an hour was preposterous, that my investigation had shown that the most that those laborers had received in the past was about 60 or 75 cents an hour and that our wage rate of 90 cents an hour was the most which they had ever received before we came there.

I told Mr. Hunter that I thought it was a mistake to start out with such a high wage rate, that it would be much better to have a wage rate lower than \$1.36 an hour and then have

A. Hamilton Bryan.

something to build on, to have some increases from time to time.

Mr. Hunter agreed with me. He said he thought I was right, but that the Beckett Construction Company had already agreed to a rate of \$1.36 an hour and that there wasn't anything that United Construction Workers could do about it.

After that we discussed the matter. Mr. Hunter said the State Highway Department in Kentucky had approved a wage rate of \$1.35 an hour. He showed me some papers that indicated that to be correct. Later I questioned him and he said that it turned out that that was the wage rate around Lexington and Louisville, which was a very different proposition from that in Breathitt County. It also developed

page 374 } that Mr. Hunter was confused about rates between wage rates for skilled classifications for labor and for unskilled classifications of labor. In other words, \$1.35 an hour wage rate apparently was not the same thing as what we were talking about in Breathitt County.

After that, we discussed what seemed to be some advantages of the United Construction Workers arrangement. I asked Mr. Hunter if, for example, a carpenter could be used to tie reinforcing steel, which work is normally done by a reinforcing iron worker under A. F. of L. agreements. Mr. Hunter said yes, that that could be done under the United Construction Worker arrangement, that there would be no question of any jurisdictional disputes, but that while the man was performing the work of tying reinforcing steel, that is, the carpenter, he would have to be paid the wage rate for reinforcing iron workers. I told Mr. Hunter that I thought that was a good arrangement and one that had a lot of advantage to it.

The next item that we discussed was the United Construction Workers requirement about seniority lay-offs. I told Mr. Hunter that I thought that their requirement on the matter of lay-offs would just lead to constant turmoil. I don't recall that Mr. Hunter made any comment about it.

The next question that came up was on the matter of the clause which prevented the contractor from bringing a suit against United Construction Workers.

I told Mr. Hunter that I didn't see any good reason why the contractor should be required to agree in advance that he wouldn't bring suit against the United Construction Workers, that if the contractor was done a wrong, the contractor should be able to bring a suit. Whereupon Mr. Hunter said that the United Mine Workers didn't like to be

A. Hamilton Bryan.

sued, didn't like to get into court, that the last time they were in court the United Mine Workers had been fined a million dollars and John L. Lewis had been fined \$20,000.

After that, I told Mr. Hunter that for many years we had worked with A. F. of L. unions and we had agreements with A. F. of L. unions in the Building Trades Council, and that I just didn't see how we could make an agreement with his organization without breaking our agreements with the A. F. of L. unions. Mr. Hunter made no comment that I recall at the moment. He said he thought we should be able to make an agreement for the laborers and that the United Construction Workers people would work peacefully alongside of A. F. of L. men, that that had been done in connection with work at Wheelwright.

I said I just didn't think that that would work out.

Q. Did you discuss with him what Hart had done and what your contacts had been with Hart?

A. Yes, we discussed that, too. I told Mr. Hunter page 376 } ter that I was sorry that Mr. Hart had led this big crowd of men, 75 to 100 people to our job and had threatened and intimidated our employees, that Mr. Hart had called our office in the middle of July, on July 14, and had said that we would have to make an agreeemnt recognizing the United Construction Workers, or he would do it, and that we had not gotten in touch with him, that I didn't know how we could make an agreement with his organization, but that I had understood from Mr. Hart that he would get in touch with me again before he did anything, and the next thing I knew Mr. Hart planned to lead this big crowd to our job. I had gotten in a truck and driven all night on July 25 to try to get to the job site, and just missed it because of car trouble, and when I did get there all the damage had been done.

Mr. Hunter's comment on that was that he was sorry, too.

Q. Did you remind him of your telephone conversation with him when you called him at Pikesville from the service station in Huntington?

A. Yes, I did. I reminded Mr. Hunter of the fact that I had placed a telephone call for him, rather for Mr. Hart, and had been unable to reach Mr. Hart on the morning of July 26, and I finally talked to Mr. Hunter and had asked him to relay a message to Mr. Hart to the effect that I was trying to get to the job as soon as I could and please to ask Mr.

Hart not to interfere with our men until he talked page 377 } to me.

Mr. Hunter said that he remembered the con-

A. Hamilton Bryan.

versation and that he had told Mr. Hart, that he had given my message to Mr. Hart.

Q. Did he say whose order Hart was working under on that occasion?

A. Yes. I told Mr. Hunter that I discussed the matter with Mr. Hart, and Mr. Hart said that he was working under orders and that I assumed that Mr. Hart was working under Mr. Hunter's orders. Mr. Hunter said that was correct.

Q. Did you say anything to Mr. Hunter about what you proposed to do to protect yourself in the circumstances?

A. Yes, I did. I told Mr. Hunter that we had been badly damaged. I told him that I was very mortified, that the coal company had taken our contract away from us. I told him that I didn't like one bit the fact that he had arranged to have about 100 mountaineers go out to the job site and threaten and intimidate our people and cause our work to be stopped, and that I expected to hold him and the United Mine Workers responsible for what had happened.

Q. Did he state whether or not he had heard that you might sue him?

A. Yes, he said he had already heard that we might bring a suit against him.

Q. What did he say along that line?

page 378 } A. I don't think anything much was said along that line except that he commented that he had already heard that we might bring a suit against them.

Q. Did he have anything to say about the Taft-Hartley Act?

A. Yes, in the course of the conversation we discussed the Taft-Hartley Act and we discussed the Virginia Right to Work law. I asked Mr. Hunter whether he liked the Taft-Hartley Act and he referred to the Taft-Hartley Act as a slave law that didn't give the United Mine Workers any protection. I said, "Why doesn't it give you protection? It protects everybody else?"

Mr. Hunter said it didn't protect the United Mine Workers because he and the other officials were good American citizens and were not communists and there was no reason why they should have to make an affidavit to that effect. With reference to the Virginia Right to Work law, he said that was the most vicious labor law of all and that with a law like the Virginia Right to Work law they didn't need any Taft-Hartley Act.

Q. Did Mr. Hunter in the course of the conversation deny that Hart had run you off the job or did he agree to it?

A. Hamilton Bryan.

A. He admitted, I think, that it was done. There was no question about the fact that Mr. Hart had led the people to the job and had made them stop work.

page 379 } Q. Did you tell Hunter—

A. Mr. Hunter seemed to think he was entirely justified in what he had done. There wasn't any question about what had happened, it was the justification.

Q. Did you tell Hunter about Hart having told you at Sal-yersville that he could bring a thousand men there to hold the line, if necessary?

A. Well, in the conversation with Mr. Hunter he said that all they wanted us to do was to recognize them for the labor-ers, that they hadn't tried to organize the carpenters. I took issue with him on that and told him that they had threatened our carpenters and they had demanded that the carpenters become members of the UCW, and Mr. Hart had done so repeatedly, that he did it in his telephone conversation with me on July 14, he did it at the job site on July 26, and he had done it at the job site when he stopped the men from working. I said Mr. Hunter told me that Mr. Hart told me that he could bring a thousand men to the job to hold his picket line.

Mr. Hunter then replied that there wasn't any question about it. He said Mr. Hart could arrange to have 6,000 men brought there to stop us from working.

Q. Did you express yourself about Hart's men coming there armed to run your men off the job?

page 380 } A. I certainly did. I asked Mr. Hunter why it was that Mr. Hart had brought the group of men there with guns. Mr. Hunter's response to that was that it was almost the second nature of a man in the mountains of Eastern Kentucky to carry a gun, and he couldn't help it, that he had often seen meetings up at Tiptop and at all those meetings people came there with guns, that the butt of a gun was used as a gavel to call them to order. I explained to Mr. Hunter that if he and Mr. Hart were going to undertake to organize groups of men that would go out and terrorize people with guns and then they got out of control, that they couldn't disclaim responsibility for it. Mr. Hunter seemed to have the idea that if these people came there with guns and shot and killed somebody, he didn't authorize it, and it wasn't his responsibility.

Q. During the course of the conversation did it become necessary for you and Mr. Hunter to reconcile any discrepancy in your recollection as to what Hart had done on a given day?

A. Hamilton Bryan.

A. Yes, we got into a discussion about whether or not Mr. Hart had gone to the job site on a certain date. I am not certain about the date at this time, but I think it was August first. I said that Mr. Hart had gone to the job and Mr. Hunter seemed to think that he had not gone to the job. Mr. Hunter said he could clear up the question very easily by looking at his files. He opened up a file drawer page 381 } and there was a whole series of files in a very neat arrangement. He pulled out a file folder that was clipped on a board, a cardboard back. It was a weekly report file that gave a daily account day by day of the activities of the different people who worked under Mr. Hunter. This was the report on Mr. Hart. Mr. Hunter said that this was a report that he sent in every week to Washington making a report on the activities in his region. He found the item that covered the question that we were discussing, and that cleared it up. I don't remember now exactly how it was cleared up, but I was able to glance briefly at the files.

Q. Since this suit was started, have you through interrogatories to the defendants attempted to get copies of those reports to which Mr. Hunter referred during that conference?

A. Yes.

Mr. Fred G. Pollard: Objection, Your Honor. The interrogatories are on file and they should be entered, and if the plaintiff is going to testify about them, they should be introduced.

Mr. Robertson: I never heard such a suggestion as that, Your Honor. The interrogatories and answers to them are entirely independent of this. They may or may not be introduced in evidence. They have not been introduced yet.

The Court: You merely asked him a question page 382 } about whether he received them.

Mr. Robertson: Whether he tried to get them by asking for them and whether he did get them or not and what was the reason he was told that he couldn't get them.

Mr. Fred G. Pollard: Your Honor, the best evidence is the interrogatories themselves, and he can't sit here and testify what is in the interrogatories when the interrogatories are sitting right up there on the desk.

Mr. Robertson: I never heard of such a proposition.

The Court: We will recess, gentlemen, and the Court will hear counsel in the Chambers.

(The following proceedings were held in Chambers:)

A. Hamilton Bryan.

The Court: Will you read the question and the objections?

(The question and objections were read by the reporter.)

Mr. Robertson: I might be able to shorten this discussion a little bit in this way: The reason I made the reference to the interrogatories was to show that we had asked for those answers in the way provided by law. If I were to ask him for those reports as a matter of courtesy, they would have a right to decline to let me have them. When I ask for them in the form of interrogatories, it is their duty to let us have them. Therefore, the purpose of my question is to show that

I asked in the way that the law allows me to ask
page 383 } to get them as a matter of right. We didn't get
them because they said they had been destroyed.

Mr. Allen: Section 8-320, the provision for the filing of the interrogatories and then Section 8-322, the provision for the answers being introduced in evidence: "Answers to such interrogatories may be used as evidence at the trial of the cause, in the same manner and with the same effect as if obtained upon a bill of discovery." The cases construing this section hold that, for instance, a plaintiff can introduce the answers to interrogatories filed by the plaintiff against the defendant, and on the other side the defendant can introduce interrogatories filed against the plaintiff and his answers.

We asked in the interrogatories for these reports and they answered that they had been destroyed.

Mr. Robertson: Excuse me one minute. Just to shorten it. I am perfectly willing to change the form of the question and ask Mr. Bryan if since this trial started, since this suit was instituted, he has called on the defendant for copies of those reports. His answer would be yes. "Have you got them?" "No." "Why did they tell you you couldn't get them?" "Because they said they had been destroyed."

Mr. Allen: Let me finish what I started.

Mr. Fred G. Pollard: While you have that book will you please read the next two sections to the Court on
page 384 } those interrogatories. I think you referred to
320.

Mr. Allen: You mean that is on production of books and other writings. "In any case at law a party may file in the clerk's office, and in any case or matter before commissioner of a court any person interested may file with such commissioner, an affidavit, setting forth that there is, he verily believes, a book of accounts or other writing in possession of

A. Hamilton Bryan.

an adverse party or claimant containing material evidence for him, specifying with reasonable certainty such writing or the part of such book. The clerk or commissioner shall issue a summons, directed as under 8-320, requiring him to summon the proper party to produce such writing, or an exact copy of any such part of such book, and make return thereof as under that section. With the summons there shall be a copy of the affidavit, which shall be delivered to the person served with the summons at the time of such service. If the summons be against a plaintiff who is not a resident of this State, or a defendant who is not a resident of this State but who has appeared in the case or been served with process in this State, the service may be on his attorney at law."

Mr. Fred G. Pollard: The next section, too, please, sir.

Mr. Allen: "When the court in which the case is, or whose commissioner issued the summons, is satisfied
page 385 } that the person filing such affidavit has no means
of proving the contents of such writing, or of
such part of the book, but by the person summoned producing what is required by the summons, and that the same is relevant and material, and sees also that the call therefor has not been unreasonably delayed, it may, unless the person summoned shall, in a reasonable time, either produce what it so required, or answer in writing, upon oath, that he has not under his control such book or writing, or any of the like import, attach him and compel him to do the one or the other. It may also, if it see fit, set aside a plea of such person, and give judgment against him by default, or if he be plaintiff, order his suit to be dismissed with costs, or if he be claiming a debt before a commissioner, disallow such claim."

I don't see where those sections have anything to do with it. Do you want to say anything about that?

Mr. Fred G. Pollard: Your Honor, in no case in the entire interrogatories did plaintiffs file the affidavits required by those two sections, describing the documents they wanted. We think that Your Honor is in error when you required us to answer them. That is off the point of this subject.

Whatever our answer was is in those interrogatories and that is the best evidence, and Mr. Bryan can't testify to that.

page 386 } Mr. Mullen: If Your Honor please, the witness
has no information whatever on this subject except what he gets from the interrogatories. He called for those, the interrogatories have been answered, that they have been destroyed. He has no knowledge other than that. He is

A. Hamilton Bryan.

endeavoring to testify on the answers given in the interrogatories. The law of Virginia is perfectly clear that all or none of the interrogatories must be introduced.

Mr. Allen: If Your Honor please—

Mr. Mullen: I will give you the cases if you want it. It is perfectly clear.

Mr. Allen: All we want to do is to avoid the breaking of the continuity of our story as it is being unfolded. We don't want Mr. Bryan to testify to what is in the interrogatories. We want the simple question if they have been called for and if they have been received. If these gentlemen insist on our stopping right here, right now, and digging out those interrogatories, which we are going to introduce later, we can go and produce this particular question and the answer to it and there they have filed the reports covering other periods but the reports covering the period here in which this trouble arose they have filed them and they say themselves that they have been destroyed.

Mr. Robertson: If Your Honor please, to solve page 387 } the thing I will withdraw the question, and I propose now in order that we won't have to come running out again—I propose to ask Mr. Bryan, "Since this suit was instituted have you attempted to get copies of those reports that you saw there?" His answer would be "Yes." "Have you been able to get them?" No. "Were you given any reason why you couldn't get them?" He was told they have been destroyed.

Mr. Allen: That is all we want now.

Mr. Fred G. Pollard: That is all we are objecting to. That is exactly what we are objecting to. He has no independent knowledge.

The Court: In other words, he is getting his information from the interrogatories.

Mr. Mullen: Giving an answer in the interrogatories when all or none of the interrogatories must be introduced.

The Court: I think the objection is good. I sustain the objection.

Mr. Robertson: The plaintiff excepts for the reasons stated.

page 388 } (The following proceedings were had in open court:)

Mr. Robertson: If Your Honor please, since the Court has ruled that in order to get that information we must refer to

A. Hamilton Bryan.

the interrogatories, we think that this is just as good a time as any to do it, and we are going to ask to take a recess until we can dig through it and find it. We had hoped to save this time, but if that is what we must do, we can find it.

Mr. Fred G. Pollard: May it please the Court, it is the position of the defendants that if plaintiff introduces any interrogatories, they must introduce them all. I suggest—

Mr. Robertson: I think the Court is in control of that situation.

The Court: The Court is in control but the Court will hear both parties on all controversial matters, and if you want to recess to go into the question of interrogatories the Court will do so. If you want to delay the matter and take the question up later, the Court will give you an opportunity to put Mr. Bryan back on the stand. It occurs to the Court that we might save some time if we go on with other questions and later on the Court will hear argument on the question of interrogatories.

Mr. Robertson: That is all right.

By Mr. Robertson:

page 389 } Q. During the course of that interview did this man Robinson who had been out on the job site put in my appearance?

A. He came in to the conference during the very last part of it.

Q. Mr. Bryan, I believe I pretty generally covered what I think occurred in that conference between you and Mr. Hunter there on August 5. Have you any recollection of anything else that occurred there in your conversation with him that I haven't asked you about?

A. Yes.

Mr. Fred G. Pollard: That is a leading question if I ever heard one. I object to it.

Mr. Robertson: Have I indicated what the answer is or what information he is going to give out?

The Court: I will overrule the objection.

Mr. Robertson: You ought to go to night school, Freddie.

Mr. Mullen: We object to a remark like that. We are trying to facilitate the case.

The Court: The jury will disregard sidebar remarks.

The Witness: During the course of the conference with Mr. Hunter I asked him what effect making an agreement with the United Construction Workers on one job would have in

A. Hamilton Bryan.

page 390 } connection with other jobs that we might have. I asked him if for example, we should make an agreement with the United Construction Workers on the job in Kentucky and should then be awarded a job in Kansas City, whether he would close down the job in Kentucky unless we made an agreement with him on a job in Kansas City.

Mr. Hunter said that his organization didn't work that way, that he wouldn't do that. I told Mr. Hunter that after my experience with them I didn't have any confidence in any agreement that United Mine Workers might make that I was satisfied that his organization had only one rule, and that was the rule of might is right.

Mr. Hunter said that I just didn't understand.

There is one other thing that occurred. I asked Mr. Hunter what would happen if we should make an agreement with the United Construction Workers for the common laborers, and then our A. F. of L. employees should get mad about it and have a picket line. I asked Mr. Hunter if United Construction Workers would honor the A. F. of L. picket line. Mr. Hunter said that I need not worry about that, that United Construction Workers would always see to it that its contractors would properly be taken care of and protected. Mr. Hunter said that each case of that kind would have to be decided on its own merits and he indicated strongly that United Construction Workers would not pay any attention to A. F. of L. picket lines.

By Mr. Robertson:

page 391 } Q. Mr. Bryan, on August 7, 1949, did your field clerk, Maynard Ragan, send you a number of applications by your laborers who had previously applied for membership in the Salyersville A. F. of L. local?

A. On August 7, 1949, Maynard Ragan and Robert Poe, who was the business agent of the Salyersville Carpenters Local 697, met me in the law offices of Mead & Johnson in Paintsville. I had been told that all of our laborers and labor foremen had made application to become members of the Salyersville Local as carpenter helpers, and that Bob Poe had the applications. I asked Robert Poe if he would send them to me, that I would like to see them. So Robert Poe said he would give them to Maynard Ragan, who would send them over to me.

Q. Is that package the package that you received?

A. After that, Maynard Ragan mailed the application

A. Hamilton Bryan.

blanks to me and we received them in Richmond on August 10, 1949. Here they are.

Mr. Mullen: Do you propose to introduce those?

Mr. Robertson: Yes.

Mr. Mullen: If Your Honor please, the proper party to introduce those is the man named Poe. They are third-hand in Mr. Bryan's hands. The man who took those is the man who should identify them and who can tell under what circumstances they were taken.

Mr. Robertson: If Your Honor please, I am page 392 { going to prove through Mr. Bryan here that he has compared these signatures with the signatures on his payroll and that he has thereby established the authenticity of them. At the proper time I am going to have Maynard Ragan here to testify to the circumstances under which he actually received them. I offer them in evidence for what they are worth. I think it is material and relevant in view of the fact of the statement that was made by Mr. Mullen in his opening statement that these laborers of ours had joined up with the United Construction Workers when here are their applications at the very time—I think most of them are dated about July—I haven't looked at them—I have forgotten, the 16th or the 26th, the very time we are talking about, and they had filed applications with the Salyersville Local to join up there.

The Court: Do I understand you are going to have the man who took those applications present?

Mr. Robertson: Robert Poe? No, sir. I would like to tell this Court in the absence of the jury why I am not having him. I don't think I have a right to say it here in the hearing of the jury. If the Court tells me to go ahead—I ask, Mr. Mullen, may I tell?

Mr. Mullen: If you think it is proper before the jury. I know what would happen if you said it before the jury.

Mr. Robertson: I would like the jury to know page 393 { it.

The Court: There are a lot of things you gentlemen would like the jury to know that I haven't permitted you to tell.

Mr. Robertson: I think I will question Mr. Bryan along that line right now, Your Honor. I think I might as well.

Mr. Mullen: May I see one of them?

Mr. Robertson: Not yet, because you have objected to them.

A. Hamilton Bryan.

By Mr. Robertson:

Q. Mr. Bryan, in the latter part of August, 1950, did you go with me to Adrian, Michigan, in an effort to take the deposition of Robert Poe?

A. Yes, sir.

Q. Were we successful or unsuccessful in taking his deposition?

Colonel Harris: We object to that as wholly immaterial, if the Court please.

Mr. Robertson: If Your Honor please, I am just going to tell it right now.

The Court: I suspect we had better recess. There are two or three matters that you want to argue. We will just have to recess and hear it in Chambers.

page 394 } (The following proceedings were had in chambers.)

Mr. Robertson: If Your Honor please—

Mr. Fred G. Pollard: Before you start, sir. I think Mr. Bryan is still on the stand, and he will have to leave.

The Court: Mr. Bryan, you will have to excuse yourself. I do not know what will come up.

Mr. Robertson: If Your Honor please, the papers in this case will show this situation, and I won't stop and get the precise date; the papers will show it.

Mr. Bryan and I thought we had made arrangements to take the deposition of a man named Bradshaw, and Robert Poe, in Adrian, Michigan, in the latter part of August, 1950. We went out there and got in touch with him and interviewed him. He promised to give a deposition along the lines that we had anticipated and along the lines indicated in what has transpired thus far in this case.

On the morning that the depositions were to be taken, he arrived at the hotel and demanded that he be paid \$1,000 cash before he would testify. We explained the impropriety of it to him, and told him that we couldn't do it, and we wouldn't want to put ourselves in that position, and he wouldn't want to put himself in that position. He said, "Of course, nobody would know about it but you and me."

Finally, after we had talked a while, he said
page 395 } that he was busy and couldn't stay but a few minutes, and if we would pay him \$500 before the deposition and give him a note for \$500 before we left town that day, that was his final proposition.

We told him, "Well, we couldn't do that." So he left.

A. Hamilton Bryan.

By then, I was already late to go to the office where the deposition was to have been taken. I read into the record that the witness we had expected to testify had declined to testify. Bradshaw never showed up at all. He never showed up at all. I said I would make my explanation to the Court at the proper time.

This, I take it, is the proper time, and I think I have a right to tell the jury why we haven't got Poe here; and in those circumstances, I think these applications are properly admissible in evidence for what they are worth. They may think they are not worth anything, but the jury may put such weight on them as they want.

The Court: Mr. Allen, do you want to say anything?

Mr. Allen: No.

Mr. Moore: No.

The Court: Mr. Mullen?

Mr. Mullen: If Your Honor please, the only one who can prove the identity of those is Poe. He is the man who took them.

page 396 } Mr. Robertson: I would like to add, a man named Hackett took a few of them, and we expect to have Hackett here.

Mr. Mullen: It has already been testified that they phoned their man out there to have them taken before he went and took them, after they had been in conference with Hart over the phone.

If they were taken, the circumstances under which they were taken show whether they are of any value or not, and to identify when and how he took them is for Poe to do. He should say, "These are the applications given to me as the representative of the A. F. of L. Union, applications to join the union." We have a right to ask the man what he did with them, whether or not he advised them later that he was sorry he could do nothing, that there was no place to take them in. Mr. Poe said he never delivered them to you for use on trial.

Mr. Robertson: I think Poe is lying.

Mr. Mullen: He may be. I think if that is the kind of people we are dealing with, he might be lying.

Mr. Robertson: We might all of us be lying.

Hamilton Bryan is prepared to testify that he has compared the signatures on those cards with his payrolls, and that they are the identical signatures. If there is any dispute about that, we can get the best handwriting expert that I know

A. Hamilton Bryan.

around here, Cassidy, and let him say whether
page 397 } they are the same signatures or not.

The Court: I doubt if Mr. Bryan is a handwriting expert.

Mr. Fred G. Pollard: He is an expert on many things.

The Court: But Mr. Cassidy, the Court considers an expert.

As presently advised, the Court is of the opinion that you can get Mr. Cassidy here to compare signatures on the payroll as against the signatures on these cards.

Colonel Harris: May I offer a suggestion there?

The Court: Yes.

Colonel Harris: It seem to me, developing what Mr. Mullen said, that we are entitled to know the circumstances under which those men executed those signatures, and the man who got them may have held out inducements or promises or may have got them on condition, and if they can just bring somebody in and say, "This is the signature of that man," it deprives us of our right to get all the legitimate evidence on the question of what happened when they signed those papers, those cards.

Mr. Robertson: If Your Honor please, the Defendants claim that these men right here, our laborers, are members of the United Construction Workers. If they are in their own membership, they can bring them here and have
page 398 } them tell anything they want to tell. They may be bringing some of them here, I don't know.

Colonel Harris: The fact that we may want to do something that he wants to do, equality of desire, doesn't mean abrogation of the rules of law on evidence, Judge. Every time any question comes up, counsel on the other side bring up that we are going to want to do something, but the rules of law don't change merely on account of the desires of the parties.

Mr. Robertson: I address myself to the rule of law, Your Honor. According to their own statement, these men are members of their union; and if so, it is within their power to bring them here. They can offer any explanation they want.

The Court: Let me see one of those.

Mr. Allen: If Your Honor please, I don't want to prolong this discussion, but let's get back to the simplicity of the thing. They say those men signed up with the United Construction Workers. We present applications for membership in the A. F. of L. with these men's names signed to them.

Prima facie, as soon as a man says he knows their signa-

A. Hamilton Bryan.

tures and that these are their signatures—he doesn't have to be any expert. All he has to say is that "these are the signatures of these people. They worked for me. I have their payroll checks. I have documents signed by them. I know that these signatures are the signatures of those page 399 } men." That is as far as we have to go. We have made a *prima facie* case for the introduction of those applications in evidence.

If they claim they are forgeries, that they were gotten by false pretenses or improper inducements, it is up to them to bring evidence here to prove it.

Mr. Roebert N. Pollard, Jr.: They are putting on us, Your Honor, laying the foundation for those documents. They admit they haven't laid the proper foundation when they endeavor to show by *ex parte* testimony whose signatures appear on the cards.

Mr. Robertson: I have offered to bring Cassidy here, if the signatures are challenged. It never occurred to me that they would be challenged.

I suggest the Court defer its ruling on it until I get Mr. Cassidy to come here. If Mr. Cassidy says they are all forgeries, I suppose you will want to offer them; but we won't, if they are forgeries.

Mr. Mullen: Will there be a proper foundation when you get him here?

Mr. Robertson: In view of all that has been said before the jury, I think I have a right to explain to the jury, through Mr. Bryan's testimony, why we haven't got him here and don't expect to have him here.

The Court: Let us settle this question first.

Would you care to address yourselves any further page 400 } ther to this subject?

What was the man's name who turned these cards over to Mr. Bryan?

Mr. Robertson: Maynard Ragan, his Chief Clerk on the job. Poe gave them to Ragan for forwarding to Bryan.

The Court: Is Ragan going to be here?

Mr. Robertson: Yes.

Mr. Allen: Your Honor understands who Poe is?

The Court: Yes.

Mr. Allen: You have the applications coming from a man who is supposed to get them and has charge of them. You have them given by him to the Clerk of the Plaintiff company, and he turns them over to the Plaintiff.

A. Hamilton Bryan.

The Court: Then Ragan is going to testify that Poe turned them over to him?

Mr. Robertson: Yes.

The Court: I think under those circumstances, a handwriting expert should compare the signatures, and the Court will admit them for what it is worth.

Mr. Robertson: I will have that done overnight.

Mr. Fred G. Pollard: We except to Your Honor's ruling.

The Court: Yes.

Mr. Robertson: On the other question, Your Honor, I say in view of the point that has been made here, I page 401 } have a right to have Bryan testify why we haven't got Poe here.

Mr. Fred G. Pollard: Your Honor, if Mr. Bryan can testify to that, I would like to testify why several of our witnesses aren't here.

Mr. Robertson: That will suit me all right.

The Court: Is there any objection to that, if both parties can testify to that?

Mr. Robertson: If you do, you must retire from the case. Bryan is not a lawyer.

The Court: I think it is in the discretion of the Court whether an attorney retires from the case.

Mr. Robertson: He knows what my thing is. If he will indicate what the line of his testimony is, then I will tell him whether or not I agree to it.

Mr. Fred G. Pollard: I have no idea of telling you at this time.

Mr. Robertson: I won't agree to it, then.

The Court: That is in the nature of a deposition that you have, is it not?

Mr. Robertson: No, sir.

Get the paper there and show it to the Court.

The Court: I thought you made the statement in the deposition.

Mr. Robertson: I didn't tell what it was. I said—it will be here in a minute.

page 402 } The Court: That is all right. I will take your word for it.

Mr. Fred G. Pollard: Mr. Robertson's statement is absolutely correct.

Mr. Robertson: If Your Honor please, this fellow Bradshaw out there kept on hinting that he wanted a hand-out, and we made out like we didn't get the point. He would do like

A. Hamilton Bryan.

this, and say, "You can't live on thanks, you know. It takes money to live. It takes money to live these days."

What was I going to do; get him a Virginia ham?

"Well, I don't know. Of course, I plant seed, and I expect them to come up."

We just couldn't see the point.

Then when the morning came for the shakedown, Bradshaw didn't show up at all, so we had nothing on him, you see. Bradshaw could walk right in here today and say I entirely misunderstood him and was doing him a great injustice. Poe came on in, and Poe didn't make any bones about it.

I said, "You don't want to look like you are selling out, and we don't want to look like we are buying you. What would happen? Suppose they spring that on you at the trial; how would you feel?"

He said, "Wouldn't nobody know anything about it but you and me."

page 403 } The Court: What is your objection to Mr. Bryan's stating those facts?

Mr. Fred G. Pollard: It is not material to the case.

Mr. Robertson: It is, Your Honor. They are going to argue: why didn't we have Poe here?

The Court: Do you want him to say why he isn't here?

Mr. Robertson: Yes, a reasonable explanation. We could have had him here if we bought him.

Mr. Fred G. Pollard: He can explain if he is asked why Poe isn't here.

Mr. Allen: The Business Agent for the A. F. of L. under whose jurisdiction these applications would come, was receiving them and handling them. He is the man to come here and testify about all this. We would certainly be criticized and there would be a presumption against us for not having him here, if we don't explain his absence.

Mr. Mullen: What was Ragan's part in it?

Mr. Allen: He didn't do a thing but just receive them from Poe, that is all.

Mr. Robertson: Hamilton Bryan was coming back to Richmond, and it was agreed there that—Poe didn't have them with him, and he would go back and get them and give them to Ragan, and Ragan would send them on in to Richmond to Bryan.

page 404 } Mr. Mullen: Did Ragan help to get them originally?

A. Hamilton Bryan.

Mr. Robertson: No, he didn't help to get them.

The Court: How far do you want him to go in his statement?

Mr. Robertson: Just to say that Poe tried to make us pay him a thousand dollars, and we wouldn't do it, and therefore he is not here.

Mr. Allen: And wouldn't give his deposition, either.

Mr. Robertson: Yes, he refused to give his deposition.

Colonel Harris: Judge, unless we accuse them of something,—if we were to make any accusation against them that implied that they had failed in their duty to produce evidence, they might be entitled to an explanation, but no accusation has been made against them.

You could prolong any trial indefinitely by just offering reason after reason as to why X, Y, Z, and A, B, C, and everybody else, hasn't been subpoenaed.

Mr. Robertson: We are not talking about that, Judge. We are talking about this one particular thing, this instance.

To show you how material it is, with all this talk that has happened about Poe and all that has been said now before the jury about Poe, they will say—Mr. Mullen just page 405 { went to town on that. "If he took them, why don't you have him here and prove them through the proper man?" That challenge has been laid down to us in the presence of the jury. Now we have a right to meet it.

Mr. Mullen: My language was, "I object to its being proved this way. The proper person to prove them is the man who took them."

Mr. Robertson: That is right.

Mr. Lowden: You also said you knew why he wasn't here.

Mr. Mullen: That was his side remark, and I answered it, and had a right to answer it. If he is going to make side remarks to the jury—

Mr. Robertson: And I have a right to show why he is not here and why we don't have his deposition.

Mr. Fred G. Pollard: In that connection, Your Honor, we would like to move the Court to ask the jury to disregard Mr. Robertson's remarks just before we retired back here to chambers.

The Court: What were the exact remarks?

Mr. Robertson: I don't remember what they were, but it is all right with me to tell the jury to disregard it.

The Court: Do you remember what the exact remarks were?

A. Hamilton Bryan.

Mr. Fred G. Pollard: He implied to the jury page 406 } that something happened to Mr. Poe which we had done to keep him from being here.

Mr. Robertson: Oh, no. You are wrong on that.

Mr. Allen: He doesn't intimate that.

Mr. Robertson: In view of that, that is just another reason why I should be permitted to tell the jury what happened.

Judge, it just seems to be that is ordinary fair play and common sense. There is nothing to it.

The Court: I will let him answer the question.

Mr. Fred G. Pollard: Reserve an exception.

Mr. Mullen: Do you want to take up the question of the interrogatories? We can dispose of that in a very few seconds.

The Court: Are you going into that right now?

Mr. Robertson: No.

The Court: One of the members of the jury wants to go to a doctor this afternoon at about a quarter to five, and I promised him I would adjourn at 4:30. He is having some sinus trouble. I thought maybe when we adjourned, we might come in here a few minutes and take that question up.

Can you think of any other question now that may come up before 4:30 that will require a conference?

Mr. Lowden: Can we think of anything that won't?

Mr. Robertson: Just to save time, as I understand page 407 } stand, I am going to try to get Cassidy tonight to make this comparison and be back here on that.

The Court: Yes, and they may be offered for what they are worth.

Mr. Robertson: Yes.

(The following proceedings were had in open court.)

Mr. Robertson: If Your Honor please, I think the sequence of this matter will be clarified if I at this time introduce in evidence the transcript of what occurred at Adrian, Michigan, on August 22, 1950, and then after that, have Mr. Bryan go ahead with his testimony.

(Document exhibited to Mr. Mullen.)

Mr. Mullen: If Your Honor please, this is not a deposition. There was no evidence taken here.

Mr. Robertson: I will ask the Court to look at it and rule.

A. Hamilton Bryan.

(Document handed to the Court.)

The Court: Why not let Mr. Bryan go ahead and testify, and we will take this up later.

Mr. Robertson: All right, sir.

Mr. Bryan, come around to the stand.

By Mr. Robertson:

Q. Mr. Bryan, there has been repeated reference here to a man named Robert Poe, one of the representatives of the Salyersville Local, A. F. of L. Do you recall his page 408 } connection with that union?

A. Robert Poe was Business Agent of the Salyersville Local.

Q. After the occurrences at the job site, about which you have testified, happened, did you take an affidavit or statement from Mr. Poe about the occurrences?

A. Yes.

Q. In consequence of that, did you go to Adrian, Michigan, with me for the taking of Mr. Poe's deposition there, scheduled for August 22, 1950?

A. Yes, sir.

Q. Where is Adrian, Michigan?

A. It is about 50 or 60 miles south of Detroit, closer to Toledo than it is to Detroit.

Q. Did you contact Mr. Poe there and arrange to take his deposition on August 22?

A. Yes.

Q. Did he come to see you on August 22?

A. Yes, he came there.

Q. Did he give his deposition?

A. No; he refused to do it.

Q. Why?

A. Well, Robert Poe said that he lived at Ivyton, Kentucky—

Mr. Fred G. Pollard: Your Honor, this testimony page 409 } many looks like it is not going to be what Mr. Robertson told us it was going to be.

By Mr. Robertson:

Q. Tell us why he refused to give his deposition.

The Court: The objection is sustained. Just give your reasons.

A. Hamilton Bryan.

The Witness: The two reasons—

Mr. Pollard: Mr. Robertson gave but one reason.

By Mr. Robertson:

Q. Mr. Bryan, you just give the one main reason that happened when you and I were in the room.

A. Robert Poe wanted to be paid a thousand dollars cash in advance to testify. He offered other reasons.

Q. Did he ever reduce that offer?

A. We said it wouldn't be proper and it wasn't right and we couldn't do it. He finally said, "I have one last proposition. Pay me \$500 now and give me a note for \$500."

Q. Did you accept that proposition or decline it?

A. No, we said we couldn't do that, that it was unlawful and wasn't right.

Q. Did he say anything about anybody knowing anything about it then?

A. I didn't understand your question.

Q. Did he say anything then about who would know about it?

A. He said wouldn't anybody know anything
page 410 } about it but him and me.

Q. Is he the same Poe who took these applications?

A. Bob Poe was carpenter who had worked for us for some time and became business agent of the Salyersville local. Pursuant to Mr. Delinger's request, he arranged to have those applications signed, and later gave them to me through Mr. Ragan, and there was no question about the genuineness of them whatsoever.

Mr. Robertson: If Your Honor please, before I offer them I am going to have Mr. Cassidy, the handwriting expert, determine whether they are valid or invalid.

The Court: All right.

By Mr. Robertson:

Q. So far as you know, will Mr. Poe be here to testify for the Plaintiff during this trial?

A. No, he said he wouldn't testify for us unless we paid him, and threatened to testify for the Defendants if we didn't. I haven't heard any more from him.

Q. Mr. Bryan, did you have another interview with Mr. David Hunter at Pikeville on May 15, 1950?

A. Yes, sir.

A. Hamilton Bryan.

Q. How did you happen to have that interview with him?

A. We had been invited by the Island Creek Coal Company to submit a proposal to construct a church and a
page 411 } recreation building in Mingo County near Ragland, West Virginia, or Delbarton. I think it is closer to Ragland. We had our estimate practically prepared and were going to submit it in the first part of May. At about that time I got information that another contractor, the R. H. Hamill Company, of Huntington, West Virginia, was constructing a small office building for Island Creek Coal Company at Ragland and that United Construction Workers had closed down the job of the R. H. Hamill Company. I decided that before we submitted our proposal we had better investigate the situation a little further. So I took a trip to West Virginia and Kentucky.

On the 15th of May, last year, I drove over from Williamson, West Virginia, to Pikesville, and went to the office of Mr. David Hunter. I got there about 8:30 in the morning and waited for Mr. Hunter to come in. His secretary came in at about 9:30 or 9:15 and said that Mr. Hunter was down the hall talking to Tom Raney an International Board member. I learned that Mr. Hunter had just been off to Washington for about a week to attend some conference of regional directors. Mr. Hunter came in about 9:15, came in to his office. His secretary must have come in a little bit before that.

He saw me. He didn't recognize me at first. I told him who I was. He wanted to know what I cared to see him about.

I said I wanted to talk to him. He took me into
page 412 } his private office, shut the door, and we talked for a while. I told Mr. Hunter that we had been invited to submit a bid for some work over near Ragland and that, as I recalled it, he had told me in my last conference with him that Mingo County was in his region. Mr. Hunter said that was right. So I asked Mr. Hunter what the wage rate was. He said \$1.36 an hour.

I said, "Mr. Hunter, if we get that job, will you expect us to use United Construction Worker men and to make an agreement with United Construction Workers?" Mr. Hunter said that he did.

I told Mr. Hunter that we couldn't do that, that we had our agreements with the A. F. of L. unions and if we got the job we would do it with A. F. of L. men. Mr. Hunter said, "No such thing," that we would have to use his men.

I told him that the purpose of my visit was to see if I couldn't make some understanding that if we got the job in

A. Hamilton Bryan.

Mingo County he would leave us alone and wouldn't bother us, like happened over in Breathitt County. Mr. Hunter wouldn't agree to it. He said that they would attempt to organize our job just like had been done in Breathitt County and expected all our workers to be members of their organization.

I told Mr. Hunter that I understood that the R. H. Hamill Company had been stopped by Clifton Brown, a
page 413 } field representative for the UCW over in West Virginia. Mr. Hunter said that the reason was that Mr. Hamill's superintendent had gotten sick.

I told Mr. Hunter that Mr. Hughes, the manager of the Hamill Company, had told me differently, that Mr. Hughes said—

Mr. Mullen: We are going clean out into another company and what the manager of some other company said. We are going far afield, I think.

Mr. Robertson: I don't want to go into it in too much detail, Your Honor. We have shown in our trial brief other instances of running other people off the job before and after this occurrence where they ran us off the job, and this is admissible to show a scheme, a course of conduct, and a planned proceeding.

By Mr. Robertson:

Q. Just tell what he said about your company now, Mr. Bryan.

Mr. Mullen: That question remains for the Court to pass on.

Mr. Fred G. Pollard: Do I understand that the objection and exception we made this morning still run to this line of questions?

The Court: I so understand.

Mr. Robertson: It is all right with me, Your
page 414 } Honor, but it seems to me that they are making one objection to cover every phase of the law. I think we have gone into a lot of different legal points since then, but it is all right with me.

The Court: Do I understand you are objecting to all the testimony and evidence that has been given or just to that portion which you originally objected to for the reasons stated?

Mr. Fred G. Pollard: All that has been given, for the reasons stated.

A. Hamilton Bryan.

Mr. Robertson: That is all right with me.

The Court: All right.

The Witness: I told Mr. Hunter that Mr. Hughes had said differently and that the Hamill Company had given up all further ideas of doing work in the coal fields because of the way the United Construction Workers had been acting. After that, Mr. Hunter changed his tune and said, yes, that the job of the Hamill Company on the office building at Ragland had been taken over by the Frederick Engineering Company, which had an agreement with the United Construction Workers.

By Mr. Robertson:

Q. Did you make any suggestion to Mr. Hunter that he talk it over with Tom Raney, the International Executive Board member, and see if he couldn't let you by?

A. Yes. In the course of the conversation Mr. Hunter said that if we undertook to perform the work at Rag-
page 415 } land with A. F. of L. men he didn't think the coal miners would work for the coal companies. He said he was going to talk to Tom Raney and to Mr. Blizzard, the President of District 17, Charleston, West Virginia, about it. I told Mr. Hunter that we had performed a lot of work in Mingo County and Logan County for the Island Creek Coal Company, and that we had never had any trouble before Mr. Hunter's region had been organized at Pikeville, and that I was sure that if Mr. Hunter and Tom Raney would give instructions that we were not to be bothered, we would never have any more trouble.

Mr. Hunter's response to that was that he couldn't do that, that it would be against their orders.

After that I asked Mr. Hunter what would happen if we got other work in his territory, say at Paintsville or some other place. He said that if we got any work in his area, whether it was in Mingo County or Paintsville or Williamson or wherever it might be, he would attempt to organize our job just like he had done in Breathitt County, and that that was all there was to it, that the A. F. of L. didn't have any business coming into his territory.

Q. Did he say anything about this suit?

A. Yes, he did.

Q. What was that?

A. To start off with, Mr. Hunter said that he thought that we had made a big mistake in pulling out of Ken-
page 416 } tucky, and I told him that we didn't have any choice, that our contracts had been terminated.

A. Hamilton Bryan.

Then Mr. Hunter said that remained to be proven in court. He said there had been a lot of additional work in Kentucky and that we probably could have gotten it, but he didn't see how we had been damaged \$500,000. I told him that that remained to be proven in court.

Q. Is that the substance in general of your entire conversation with him, as you recall it?

A. I think about the only other thing of importance was that we discussed the additional work in Kentucky, and he said that it had been done with laborers and carpenter helpers who were members of the United Construction Workers, and that the other craft labor, carpenters, and so forth, had been A. F. of L. people. He said that in the future, that is, after May, 1950, all the employees on this work in Kentucky, carpenters and everybody else, would have to be members of the United Construction Workers.

He made a talk to me about the advantages of the United Construction Worker arrangement and tried to sell me on the idea that it was a much more advantageous plan than the A. F. of L. setup.

I told him that we just couldn't do that, that I was sorry, and that is about all there was to it.

(Document exhibited to Mr. Mullen.)

By Mr. Robertson:

Q. At any time during any of your interviews page 417 } with David Hunter did he deny responsibility for what had been done by Hart?

A. Oh, no. He said that Mr. Hart had done it pursuant to his orders and that that was their policy, and he would do it again if he had to.

Mr. Mullen: No objection.

By Mr. Robertson:

Q. Mr. Bryan, at my request have you made up a tabulated statement of the damages that you claim Laburnam sustained by being run off the work under construction, without reference to future work?

A. Yes.

Q. Is that the statement that you made up?

A. This doesn't undertake to set out any damages resulting from the loss of the business connections.

A. Hamilton Bryan.

Q. No. I am just talking about the jobs that were under way at the time you were run out.

A. That is right.

Mr. Robertson: I might explain, as I have to Mr. Mullen, I tore off the bottom part because it had some stuff there that was perfectly obviously inadmissible.

I offer the statement in evidence and ask that it be marked Plaintiff's Exhibit No. 32.

(The document referred to was marked Plaintiff's Exhibit No. 32 and received in evidence.)

page 418 } Mr. Robertson: Maybe I can read it to the jury, and it will save time.

The Court: I believe it would.

Mr. Robertson: Statement of Damages:

Damage from loss of fee on contract for construction of 25 dwellings: \$534.19.

Damage from loss of fee on work in connection with construction of schoolhouse: \$319.67.

Damage from loss of fee in connection with work for installation of asbestos shingles on said 25 dwellings: \$250.00.

Damage from loss of fee in connection with work for installation of concrete foundations for coal preparation plant for No. 2 Mine (now called No. 3 Mine): \$1,250.00.

Damage from loss of fee on other additional work in Breathitt County, Kentucky, amounting to approximately \$542,500.00 which Pond Creek Pechontas Company had agreed to have Laburnum Construction Corporation handle on a basis of cost-plus a fee of five per cent: \$27,125.00.

Total: \$29,478.86.

page 419 } (Document shown to Defendant's counsel.)

Mr. Mullen: If Your Honor please, we object to this because it is speculative, it is not under any existing contract which has been shown here, and it is improper to be put in for that purpose.

Mr. Robertson: If Your Honor please, I understand that that same question has been raised before, and the Court has ruled that it is admissible. I might state in addition to this that all of these items here are supported either by the testimony of Salvati, which is here in deposition form and I ex-

A. Hamilton Bryan.

pect to read when Mr. Bryan's testimony is concluded, and in the form of actual—I don't know whether that applies to this or not. It is supported by what Mr. Bryan has testified and will now testify and also by the deposition of Mr. Salvati, in which he says that he had agreed to award them this work. Here is the statement (handing to the Court). Mr. Mullen has written in there "Plaintiff claims." Of course they deny that that is what it comes to.

Mr. Mullen: I think it is one of the principal questions in the case, Your Honor, the question of speculative damages, whether they are to be permitted to put in evidence of speculative damages where there is no contract shown and work has not been done and might never have been done.

Mr. Robertson: That is the same question that has been argued in Chambers.

page 420 } The Court: The Court will admit this exhibit for what it is worth, and it is still a question for the jury.

Mr. Mullen: We reserve an exception.

Your Honor means it will be a question for the jury under the instructions of Your Honor when the time comes for Your Honor to give the instructions on what the law is.

The Court: The Court will instruct the jury what the law is at the proper time.

By Mr. Robertson:

Q. Mr. Bryan, at my request did you prepare an itemized statement of the work which Mr. Salvati testified and stated that he would have given the Laburnum Construction Corporation but for the fact that it was run out of the field?

A. This is a statement of the additional work which Mr. Salvati agreed Laburnum Construction Corporation would handle, which I testified amounted to approximately \$600,000. It actually totals \$617,500. This is a breakdown of it.

Mr. Robertson: If Your Honor please, I offer in evidence the statement which is now entitled "Statement of Additional Work in Breathitt County, Kentucky which Plaintiff claims Mr. Salvati agreed Laburnum Construction Corporation would handle on the basis of cost plus 5 per cent," and ask that this statement be marked Plaintiff's Exhibit No. 33.

page 421 } (The document referred to was marked Plaintiff's Exhibit 33 and received in evidence.)

A. Hamilton Bryan.

The Court: Gentlemen, the Court will recess for five minutes.

(Brief recess.)

Mr. Robertson: If the Court please, I will read to the jury Plaintiff's Exhibit No. 33, which is the statement of additional work which Plaintiff contends was promised by Mr. Salvati.

Machine Shop, \$60,000; Lamp House, Supt. Office and Oil House, \$12,000; Warehouse Building, \$25,000; 200 houses, \$300,000; 10 supervisors' Houses, \$60,000; one Large Store, \$75,000; one Service Store, \$15,000; Heating Plant for Tipple at Mine No. 1, \$23,000; Tipple Shop, \$3,000; Foundations for Tipple at Mine No. 2 (now called Mine No. 3), \$25,000; Sand House, \$7,000; Water System, \$12,500. For a total of \$617,500.

(Document shown to Defendants' counsel.)

Mr. Mullen: If Your Honor please, we object to the introduction of evidence as to other contracts other than those which are the subject of this suit, as set up in this suit, before and after.

Mr. Robertson: If Your Honor please, I think that is the question the Court ruled on a few moments ago and has been ruling on repeatedly through the trial here. It is page 422 } covered in the trial brief, that these contracts that were—I think all of these are either the contracts from which we were run off or contracts executed before then, and the purpose is to show the value of the business connection and the stability of our relationship with these companies.

The Court: May I see that.

(Document handed to the Court.)

Mr. Robertson: It is already in evidence. I want to support it now introducing the contracts that have not already been introduced.

Mr. Fred G. Pollard: If Your Honor please, the plaintiff introduced this morning—and the admissibility has not been determined yet—the Laburnum Construction Corporation, Richmond, Virginia, construction record, and the majority of the work contained on that list isn't contained in this con-

A. Hamilton Bryan.

struction record. I think they should be bound by what they introduced first.

Mr. Robertson: I think the gentleman is mistaken on that, Your Honor.

The Court: What is your understanding of it?

Mr. Robertson: My understanding is that it is included in there. We can ask Mr. Bryan right now.

The Court: Is this work included in that statement, Mr. Bryan?

Mr. Fred G. Pollard: Only a part of it, Your Honor.

The Witness: Yes, it is, Your Honor.

page 423 } Mr. Robertson: There may be some little items there, as Mr. Bryan said, some small items were left out of that book.

The Witness: It is included.

The Court: I will allow the admission of this exhibit for what it is worth.

Mr. Mullen: We understood your ruling this morning, but this is coming up anew. I think it is proper to note an exception.

The Court: Your exception is noted.

By Mr. Robertson:

Q. Mr. Bryan, at my request have you prepared an itemized statement of the various contracts that Laburnum had with Island Creek and its associated and affiliated companies including the contracts that it was run off of, according to your contention?

A. This is a statement showing contracts which Laburnum had with Pond Creek Pocahontas Company, Island Creek Coal Company and various associated companies and further showing the job profit or loss of Laburnum on each contract. The statement is dated January 9, 1951. It sets out all contracts and work which we have ever had with those companies, including the ones that we were run off of.

Q. Have you got a copy of that before you?

page 424 } A. Yes, sir.

Mr. Robertson: I offer the statement in evidence and ask that it be marked Plaintiff's Exhibit No. 34.

(The document referred to was marked Plaintiff's Exhibit 34 and received in evidence.)

A. Hamilton Bryan.

Mr. Mullen: Have you a copy of that that we could have, Mr. Robertson?

Mr. Robertson: Do you have some more copies of that, Mr. Bryan?

The Witness: I can give you one, Mr. Mullen.

By Mr. Robertson:

Q. The first item there is a contract dated September 6, 1947, for 50 prefabricated dwellings, Delbarton, West Virginia, amount \$95,631, showing a profit of \$10,696.05.

(Document shown to Defendants' counsel.)

Mr. Mullen: The Court has already ruled on this.

By Mr. Robertson:

Q. I hand you what appears to be an executed copy of the contract I have mentioned and ask you if that is an executed copy of that contract.

A. Yes, this is an executed copy of the contract. The contract amount which you just read out was the contract amount including extra work added to the amount named in the contract.

Q. What profit did you make on that contract?
page 425 } A. \$10,969.05.

Mr. Robertson: I offer the copy of the contract in evidence and ask that it be marked Plaintiff's Exhibit 35.

(The document referred to was marked Plaintiff's Exhibit 35 and received in evidence.)

By Mr. Robertson:

Q. The next item on there is marked June 6, 1948, Brookside and Valley View Stores, Delbarton and Holden, West Virginia, \$66,486.05, showing a loss of \$2,617.90.

(Document shown to Defendants' counsel.)

By Mr. Robertson:

Q. I hand you what purports to be an executed copy of that contract and ask you if it is an executed copy of that contract.

A. Yes. The contract date, however, is June 29, 1948, instead of June 6.

A. Hamilton Bryan.

Q. I may have read it wrong.

A. I think you did.

Mr. Robertson: I offer that contract in evidence and ask that it be marked Plaintiff's Exhibit No. 36.

(The document referred to was marked Plaintiff's Exhibit 36 and received in evidence.)

By Mr. Robertson:

Q. Did that contract show a profit or a loss?

A. According to the books, the contract showed a loss.

Q. How much?

page 426 } A. \$2,617.90.

(Document shown to Defendants' counsel.)

Mr. Mullen: If Your Honor please, we don't think that this letter which it is proposed to introduce is material or relevant, and we object to it for that reason.

Mr. Robertson: If Your Honor please, we are introducing this letter at this time because it comes in here in chronological sequence. Mr. Bryan has testified that he was asked to take over the various building activities there in Kentucky for these companies and this is a letter which we think supports his testimony along that line.

(Letter shown to the Court.)

The Court: The Court will admit it for what it is worth.

Mr. Mullen: Note an exception, please.

By Mr. Robertson:

Q. Mr. Bryan, I hand you what purports to be a letter under the letterhead of Island Creek Coal Company dated September 3, 1948, from C. V. White, real estate agent, to Laburnum Construction Corporation, and ask you if you received that letter.

A. Yes, sir; I received it. White Real Estate Agency.

Mr. Robertson: I offer the letter in evidence and ask that it be marked Plaintiff's Exhibit No. 37.

page 427 } (The document referred to was marked Plaintiff's Exhibit 37 and received in evidence.)

A. Hamilton Bryan.

Mr. Robertson: I think I had better read this one, Your Honor.

"Island Creek Coal Company, Huntington, West Virginia, September 3, 1948.

"Laburnum Construction Corporation, 918 East Main Street, Richmond, Virginia.

"Attention: Mr. A. Hamilton Bryan.

"Gentlemen:

Re: Building Program

"Mr. Christie, Mr. Beattie, Mr. Saxe, Mr. Flint, and the writer discussed proposed Bartley Store, to replace one that burned recently. Mr. Beattie made a rough estimate of the cost, which I understand he will check and we will be advised within a few days. I am unable to give you the floor plan of this building at this time; but Mr. Flint expects to have it ready within a few days and we will forward it to you.

"In connection with our building program, about which we have had considerable correspondence, I would like to have you keep in mind the priority for the completion of these buildings, which is as follows:

"1. Bartley Store (mentioned above).

"2. No. 15 Store. Floor plan for this building page 428 } was furnished Mr. Beattie and we request that you prepare plans and specifications and forward to Mr. Saxe, with copy to me, as soon as possible.

"3. Club Lunch Room.

"4. Beauty Shop.

"No. 5. Appliance Warehouse.

"I will advise you later on the matter of Churches and Theaters. We are also drawing a floor plan for a Community House which will be approximately 64' wide and 100' in length, with a basket-ball court, bowling alley, and other recreational facilities. All of the above buildings will be at Holden or Pigeon Creek with the exception of Bartley Store.

"As pointed out above, Bartley Store and No. 15 Store have first priority, and we would like to have them completed before the first of the year. As soon as agreement can be

A. Hamilton Bryan.

reached on the above, we would like for you to be ready to put additional crews on these projects.

"I am suggesting that you send the plans, pending final approval, to Mr. Saxe in order that time may be saved.

"Very truly yours, C. V. White, Real Estate Agent."

The Court: Mr. Robertson, if you have something you can finish in five minutes, all right, but I have promised to adjourn at 4:30 because one of the jurors wish to go to see a doctor.

Mr. Robertson: I can get rid of a great deal right now. The question has been raised about these interrogatories and answers to them, that you couldn't say anything about any of them unless—

The Court: We won't go into that. I mean in the courtroom.

Mr. Robertson: Yes, sir. We offer all the answers by all three defendants to all interrogatories that have been filed against them.

Mr. Fred G. Pollard: Your Honor, I understand that if the plaintiff is trying to introduce them as an exhibit, that is improper. He now must read all of them to the jury.

Mr. Robertson: I don't understand any such thing on earth.

Mr. Mullen: That is the Virginia law.

The Court: I want to hear you gentlemen on that. We will adjourn, gentlemen, until ten o'clock in the morning.

(Whereupon, at 4:25 p. m. the jury was excused.)

page 430 } (The following proceedings were had in Chambers:)

The Court: As I understand, you are offering all the Plaintiff's interrogatories addressed to the Defendants.

Mr. Robertson: Yes, sir, and all the answers.

The Court: And the answers.

Mr. Mullen: Of course we can't object to their offering the interrogatories, but if they do, they have to read them, and read all of them. Section 8-322, "Use of such answers," reads:

"Answers to such interrogatories may be used as evidence

A. Hamilton Bryan.

at the trial of the cause, in the same manner and with the same effect as if obtained upon a bill of discovery."

In *Faut v. Miller*, 17 Gratt. 187, the Court said at page 210:

"It may be proper to notice here the difference between the effect of an answer to a technical bill of discovery and an answer to other bills in equity, as a matter of evidence for the defendant. We have seen what is its effect in the latter case, and what amount of countervailing evidence is required to overthrow it. In the former case—"

Referring to the technical bill of discovery, which is what our Code says they may be used as,

"* * * where the discovery is sought to be used in an action at law * * *"

Mr. Robertson: I don't want to interrupt you, but I can save you some time here. We withdraw that offer, page 431 } Your Honor, pending our ability to read that case and decide overnight whether we want to do that or not.

Mr. Fred G. Pollard: Your Honor, has he got a right to withdraw?

Mr. Robertson: I have a right to withdraw it before it is ruled on. They are trying to put me in a hole there. I have a right to withdraw it before it is ruled on. I do now withdraw the offer.

The Court: The Court is of the opinion that counsel has a right to withdraw before the Court has ruled on it. That is how I am presently advised. Have you gentlemen any different views on that? I will be glad to hear from you if you do have.

Mr. Mullen: I hadn't considered that, Your Honor.

Mr. Allen: I am sure my good friend Mr. Mullen is wrong on that principle of law, and we want to be sure before we take a position. I thought the brief we had covered it, but it doesn't cover it. Before we take a definite position on that we want to be sure, and we can be sure by in the morning.

Mr. Mullen: There is no question under the Virginia law. These two cases settle it, and there is no exception to it.

Mr. Robertson: You contend there is no merit to any point I have made. We must be right somewhere.

A. Hamilton Bryan.

page 432 } Mr. Mullen: I don't say you are not right somewhere. That is one clear case.

Mr. Robertson: If you thought you had put me in the hole and I could jump out before you caught me, I am going to do it.

Mr. Mullen: All right, you can jump out if the Judge says you may jump out, but still you can't use the part of the interrogatories you think is good and leave out the part you think is bad.

Mr. Robertson: I have withdrawn the offer.

Mr. Mullen: The Code is specific that they must all be introduced and read to the jury.

The Court: This is off the record, if you gentlemen don't mind.

(Off the record.)

Mr. Robertson: The offer is withdrawn.

The Court: It is withdrawn.

Mr. Mullen: We are not going to object to his withdrawing it.

The Court: All right, what is the next matter?

Mr. Allen: If Your Honor please, I made the statement here this morning, and didn't refer to the written rule in Wigmore's Code of Evidence, that we didn't have to have any handwriting expert to prove the handwriting of these people to these applications; that if we could produce a
page 433 } man who knows the handwriting of the persons and can say that that is their handwriting, it is just as good as any expert. Mr. Wigmore lays it down. He says in Article 3 of Rule—

The Court: I thought you had agreed to furnish the handwriting expert.

Mr. Robertson: Here is the thing, Your Honor. It could save a little expense. We are standing right to what we said we were willing to do, of course. The rule that Mr. Allen has there says that if anybody has compared the signatures and is satisfied they are correct, he can testify in support of it, and that is satisfactory. Mr. Bryan says he has done that. As I understand it, they are not satisfied with that and want the handwriting expert.

Mr. Allen: We might not be able to get him. We will get him if we can. That man is busy.

Mr. Robertson: We can get him before the trial is over. If you want him we will get him.

A. Hamilton Bryan.

Mr. Pollard: I understood, Mr. Allen, that the rule was that the person had to know the signature.

Mr. Robertson: I asked if you wanted the expert, and I am entitled to an answer.

Colonel Harris: We want him there, and I thought that was disposed of.

The Court: All right, what is next?

Mr. Robertson: Nothing.

page 434 { The Court: What about these depositions?

Mr. Robertson: I think I am entitled to read it.

The Court: We had passed that by for the time being. The Court made no decision as to the admissibility of these depositions.

Mr. Mullen: It isn't a deposition. It is an account of why they didn't take a deposition.

Mr. Robertson: It has all been explained, and I withdraw that.

The Court: All right, it is withdrawn.

What is this order here on my desk?

Mr. Fred G. Pollard: That is the subpoena. It is an affidavit.

The Court: A new affidavit? Have you gentlemen seen this?

Mr. Allen: Yes, but, Judge, my recollection is that the statute expressly provides if they are called for within a reasonable time. I don't think this is a reasonable time after the trial has gotten under way and we are busy day and night.

Mr. Pollard: It is called for under a different section, Mr. Allen. This is asked for under Section 290.

Mr. Robertson: How much trouble is it?

Mr. Allen: We don't mind getting it if we can.

page 435 { The Court: I will give you a reasonable time to furnish them, if that is what you are asking for.

Mr. Robertson: I don't think I have read it, Judge.

Mr. Fred G. Pollard: I saw you reading it just before lunch.

Mr. Robertson: You put one in every few minutes, and I am not sure I have read the last one.

Mr. Allen: He just put it in his pocket.

The Court: I will read it aloud. Do you want this on the record or not?

Mr. Mullen: I don't think so, no.

Mr. Allen: No.

A. Hamilton Bryan.

(Off the record.)

Mr. Robertson: We would like to have overnight on that. I don't know whether he is entitled to it or not.

The Court: All right, I will give you overnight on this. This will be the only matter we have to take up in the morning, will it not?

Mr. Robertson: Yes.

The Court: Will you gentlemen meet me here at a quarter to 10, and we will discuss this matter further.

Mr. Mullen: You mean the affidavit.

The Court: The affidavit and the order for *subpoena duces tecum*. All right, gentlemen, thank you very much.

(Whereupon, at 4:45 o'clock p. m. the Court recessed until 9:45 o'clock a. m. Thursday, January 25, 1951.)

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page 436 }

* * * * *

Hearing in the above-entitled matter was resumed, pursuant to recess, at 9:45 o'clock a. m., before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on January 25, 1951.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Francis V. Lowden, Jr., Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Fred G. Pollard, Colonel Crampton Harris, Counsel for Defendants.

Also Present: Robert N. Pollard, Jr.

page 437 }

PROCEEDINGS.

(The following proceedings were had in Chambers:)

The Court: I believe, gentlemen, that we were to meet this morning to discuss further this order requiring Mr. Bryan to furnish certain documents.

Mr. Robertson: Judge, we have looked up the law last

A. Hamilton Bryan.

night, and we are going to discuss it here in a moment. Coming right down to the practical phase of this matter, these gentlemen are entitled to any data we have got showing the profits or losses on the work in Breathitt County, Kentucky involved in these cases, these particular jobs, or any jobs involved in this case. I ought to broaden that, I think, to anything we have put in this case about jobs we have performed. That would be it, jobs that we have performed so far as they are involved in this case. They have no right to go out side of that. What we did at Hopewell or Chicago or Cleveland or anywhere outside of the work involved in this case has nothing to do with it. I assume that these tax returns are correct and honest returns. I can't think that they would be stupid enough not have them correct and honest, but the proper way to get it, if they want it, we will do any reasonable amount of work through the company accountant to make that stuff available to them.

The audits and final returns were made by the page 438 } company auditors in collaboration with Leach,

Calkins & Scott. If they want to bring those accountants in we have nothing to cover up and hide, but if they bring them in we want them to pay their charges and not us. With that general statement, I am going to ask these gentlemen, and I suggest Mr. Moore lead off on the law there.

Mr. Moore: Taking up the law, the general idea seems to be that these tax returns are confidential matters between the party submitting the tax returns and the government. The general rule they lay down is that these returns can be used in litigation only when the government is a party. I would like to quote one part from a recent Treasury decision No. 4945 where it is stated: "Neither the original nor a copy of the return desired for use in litigation in court will be furnished if the United States Government is not interested in the result, but this provision is not a limitation on the use of copies of returns by the persons entitled thereto."

In the case of *John O'Connell v. Ugelstadt*, the facts are somewhat similar to what we are presented with here, and the court stated: "This is a personal injury action in which the plaintiff alleges that the injuries received have permanently and partially incapacitated him. The defendant moves for the production and inspection of the plaintiff's income tax returns for the years 1945, '46, '47, and '48."

page 439 } The ruling went on to say: "The Internal Revenue Code and the regulations issued thereunder provide that tax returns shall be confidential and disclosed only upon application of the plaintiff and his attorneys in

A. Hamilton Bryan.

fact. No such provision is made for the production of such returns upon order of a federal court."

Then it goes on to say that such a ruling is in accord with the previous holdings on documents which have been declared confidential of the federal departments are not open to discovery under rule 34 of the Federal Rules."

Then the interesting part is the final sentence, in which they state: "Such a ruling will have no serious consequences as it is information desired to be obtained by intelligent use of other discovery procedure," which we believe in the present case is a long the lines argued by Mr. Robertson.

The general theory behind all that seems to be that when you call for a man's entire tax return you get a lot of items that are irrelevant to the actual subject matter of the trial, and we don't believe that we should have to furnish that in the present case. They can check the audits and the work performed in the present case and avoid the necessity of having the income tax returns.

Mr. Bryan: May I say something about that?
page 440 } The Court: No, let your attorneys talk.

Mr. Allen: Judge, let me say, if my memory serves me correctly, there is a state statute which declares the policy of the state with reference to state income returns. They are asking for the federal income tax returns, but the policy is the same and the principle back of it is the same. The state statute expressly prohibits these income tax returns made to the state from being exhibited even in a lawsuit. They are required to be locked up in a vault and kept there and can't be brought out or the information divulged except by authority of the state.

I know that is the statute because we had the question arise over in the Federal Court where a man tried to get the state income tax return for certain evidence, and it was shown there that it couldn't be done.

Mr. Mullen: You cannot get the original either from the State or the Federal Government, but you can call for the copies in a man's possession. About two years ago I was forced to do it up here in Law and Equity Court in the case of a client. I made the same objection that you are making right now, and they said, "Of course you can't call on the state to produce them and you can't call on the Federal Government to produce them, but if a man has copies, you can call for them," and we had to do it.

Mr. Allen: But the same policy that prohibits
page 441 } the state and Federal Governments from being required to produce them is back of requiring the

A. Hamilton Bryan.

individual to produce the copies, because it is the same information. The policy of the law is to encourage people to make full, complete, and detailed returns, and if you can make a man produce a copy that is in his possession, you might just as well make the state produce the original. There is not a particle of difference.

In addition to that, as Mr. Moore here so well said, and as Your Honor knows, an income tax return covers a whole lot of things that are not material to the issue in any lawsuit. They are entitled to the information that they asked for, but they are not entitled to a lot of other information that is there on the income tax return. It is wholly irrelevant.

Mr. Mullen: The purpose of prohibiting the Government from making the thing public is to prevent a lot of snoopers and a lot of publicity. The Federal Government can go to the Governor here at any time and get them and use them in tax cases. They have done it in cases I have been in.

Mr. Robertson: I don't think you have to go to that at all. Here is what you come down to here. They are entitled to information about the work that has been injected into this case. The original data, the best evidence of that—suppose

we filed a fraudulent income tax return, the best evidence of the profits or losses in those cases is

the original records of the company, the accountants, who I imagine have their work sheets, certainly the records of their office are there. I think they are going to find that these things are strictly accurate. I think it is a fishing expedition in the hope of getting something, but that is all right, we are willing go fishing with them. If they want to do that and if they want to call in our accountants and pay for them or call in any other responsible accountant, we will work with any responsible people to divulge anything that is properly the subject of inquiry in this proceeding, but they have no more to do with what happened in Chicago or Cleveland or Alabama or Hopewell or Richmond, excepting those we have brought in.

The Court: As I understand, they are asking for returns on Kentucky and West Virginia. Virginia would include all this.

Mr. Fred G. Pollard: Judge, they have put into evidence all the work that has been done by Laburnum for a 9-year period. They have put in his gross income. He has testified as to his average gross income.

Mr. Robertson: He testified that those jobs netted those profits on those jobs.

Mr. Mullen: He went beyond that and put in his total in-

A. Hamilton Bryan.

come from all sources, \$20 million, you say, in ten page 443 | years, and then you itemize year by year. You put that in.

Mr. Robertson: We put in that booklet to show that we had done a gross construction business over that period of time exceeding \$20 million, and we might do that and be hopelessly busted.

Mr. Fred G. Pollard: If those income tax returns don't show the amount of income that Mr. Bryan has stated or the amount of gross business that he has stated, we are entitled to that information to show that he is puffing this case up, which he has been doing all the way through.

Mr. Allen: If Your Honor please, the books are the best evidence here. They are entitled to see the books and to have their auditors see them. Furthermore, I would like to say here that there are some factual reasons in connection with this matter that I would like for Mr. Bryan to state as a fact as a witness in connection with the matter.

The Court: Any objection?

Mr. Robertson: I object.

Judge, I suggest this: Mr. Bryan is under oath, and let him make a sworn statement to the Court right now. He asked to be heard. Let him make his statement under oath right now.

Colonel Harris: We object to that on the ground that it is just an argument extended to Mr. Bryan under the guise of testifying.

page 444 | The Witness: I would like to say—

Mr. Robertson: Wait. I think the Court wants all the light we can get. If we put Mr. Bryan under oath and hear from him I think that is one of the best ways to get it.

The Court: He is under oath. You ask him questions. Don't let him make a statement.

The Witness: I would like to make a statement for the record that hasn't anything to do with this right now, if I might.

The Court: I suspect that you should be asked questions, that you should confer with counsel and let him ask questions. Don't volunteer any statement.

The Witness: After this is over I would like to make a statement as to what my position is about these hearings in here.

Colonel Harris: We object to any statements by the witness.

A. Hamilton Bryan.

The Court: Counsel can make a statement, but I don't think it is proper for the witness to make a statement.

Colonel Harris: May we have an objection to all these questions?

The Court: Yes, objections and exceptions.

By Mr. Robertson:

Q. What is your attitude, Mr. Bryan, regarding your willingness or unwillingness to furnish copies of the page 445 } income tax returns that have been asked for in this proceeding?

A. The income tax returns will furnish information about our complete operations everywhere. As I understand it, that information is not material and relevant in this case. The only question to be determined here is whether our job profit from the work in West Virginia and Kentucky for the Pond Creek Pocahontas Company and Island Creek Coal Company and its subsidiaries and affiliates resulted in a total figure of approximately \$58,000 as shown on the statement offered in evidence. That statement was compiled by our own auditors and accountants based on data shown in our annual audits prepared by the firm of Leach, Calkins & Scott, for the years 1947, 1948 and 1949. I can have those accountants come here to show in detail exactly how they arrived at that information or I can have one of Mr. Leach's men to come here to support it. If a mistake has been made in compiling the information we will be glad to admit it and correct it. We believe it to be true, and it can be demonstrated to be correct, we think, to the satisfaction of anybody. What happened to us on our net operations is beside the point.

The Court: These gentlemen think it is material because you said you had done \$20 million worth of business, and you have not only taken in the work done for Pond Creek and others in Kentucky, but you have included work done elsewhere over a period of ten years.

The Witness: The point of that was to show page 446 } that we had an established business. The profits or losses on that other work are not involved in this case.

The Court: That may be true, but they are entitled to show that you didn't do \$20 million worth of business.

Mr. Robertson: I haven't talked to Mr. Bryan about it. I don't see any objection to showing that, but that is still far away from the income tax returns. Suppose you did a gross business of \$20 million and then had losses that made you a

A. Hamilton Bryan.

net deficit over the whole period of years, you would still have done the gross business.

The Court: It is still in evidence that you did \$20 million worth of business.

The Witness: If they want evidence that we did \$20 million worth of business over a ten-year period we will furnish a statement of our gross sales yearly for the last ten years. I have no objection to that.

Mr. Fred G. Pollard: Your Honor, the witness is arguing with you.

The Witness: We don't object to doing that but when it comes to the profit part, we do.

Mr. Fred G. Pollard: If they say they have had a \$58,000 profit on these jobs, we are entitled to know if they reported that much income.

The Court: Do you have any authority on that, page 447? Mr. Pollard, whether or not the Court can require a party to furnish a copy of his income tax? Frankly, I haven't had to pass on that.

Mr. Fred G. Pollard: I only know that it was required in a case that Mr. Mullen had before Judge Miller, wasn't it, in Law and Equity Court?

Mr. Mullen: Yes.

Mr. Allen: If Your Honor please, suppose the income tax returns shows that he lost \$50,000 down here in Colonel Harris' town of Birmingham, and therefore his over all net profit was only \$8,000. What would that have to do with the case here? We are talking about the business here concerned. The profits that we made and would have made--

Mr. Fred G. Pollard: This isn't putting this information in evidence. It is giving us the right to inspect it. After we inspect it, then they can raise the question of whether it is admissible. We certainly have a right to look at it.

Mr. Mullen: From the figures you have furnished us, frankly--

Mr. Robertson: Mr. Mullen hasn't answered the question the Court asked him. What is the authority upon which you base your demand?

The Court: Mr. Pollard answered it.

Mr. Mullen: Mr. Pollard answered it.

page 448? The Court: Mr. Pollard stated that the Law and Equity Court required your client to furnish copies.

Mr. Mullen: My client. I was on the losing end of it.

Mr. Fred G. Pollard: And that case went to the Supreme Court of Appeals.

A. Hamilton Bryan.

Mr. Mullen: Nothing was said about that in the Supreme Court of Appeals when it was taken up. It went up on another question.

Judge, they have furnished us certain figures. We have analyzed them. We think the conclusions they have drawn from those figures and testified to are not correct, and we want means to check them by. They have undertaken to state \$20 million gross business and \$2 million a year, and then they go on to argue that that is a measure of what these damages should be, and so forth. We have analyzed the figures and don't think it works that way. During the war years there may be a big pile up of business and in the other years, it may drop down. It isn't the average. We are talking about the normal business.

The Court: In other words, you would like to have a breakdown of their contracts showing what amount of work was done in '43, what amount was done in '44, instead of the average over a ten-year period.

Mr. Fred G. Pollard: We have that, Your Honor.

Mr. Mullen: We say these figures are misleading—
page 449 } ing in here, and also it is misleading merely to
state the gross amount of work they had. They
are basing it on benefit to them, the profit to them that they
would lose by reason of these transactions out there, income.
We are entitled to know. They leave that question on the
jury. They talk about \$20 million and \$2 million. The in-
come may be very, very small.

page 450 } The Court: You want to know what the profit
is from each job?

Mr. Mullen: I want to know what the net is after they
have met their overhead and their taxes.

Mr. Allen: Outside of Kentucky?

Mr. Mullen: I mean everywhere, because you all have put
in the gross figures.

Mr. Allen: We only claim profits on the business in Ken-
tucky.

Mr. Fred G. Pollard: Will you be bound by that?

Mr. Allen: What?

The Witness: Kentucky, West Virginia—

The Court: Let Mr. Mullen finish.

Go ahead, Mr. Mullen.

Mr. Mullen: He testified he would get 5 per cent on these
jobs. That isn't 5 per cent net. That is 5 per cent gross.
And that 5 per cent may or may not provide a profit. They

A. Hamilton Bryan,

have to pay taxes, they have to pay the home office overhead, and so forth. It is a very different thing.

These figures put in about \$20 million gross and \$2 million a year are thoroughly misleading.

Mr. Robertson: If Your Honor please, here is the proposition: We are entitled to show what our gross business was, and we have shown it, just as Mr. Bryan said here a moment ago. We are entitled to show that we had a job page 451 $\frac{1}{2}$ profit or a job loss of so much on these different items of work.

What we did with it, and whether it was eaten up by a loss somewhere else has nothing to do with this case.

The Court: Gentlemen, I think they are entitled to information concerning the \$20 million worth of jobs that they allege they have performed during the last ten years, to show whether or not it was profitable to the company, because \$20 million is before the jury, and that is big money. I believe that they are entitled to information and a breakdown on those contracts for their own information for cross examination.

In regard to the tax returns, as presently advised the Court will not require the Plaintiff to furnish his tax returns, but will require any other information they desire.

Mr. Mullen: On the audits?

The Court: On the audits.

Mr. Mullen: They have had a certified public accountant make up an audit each year. We want those audits.

Mr. Robertson: You don't mean we have to furnish a copy of that?

The Court: You have them, do you not?

Mr. Robertson: That is worse than the other, Your Honor. They are not even entitled to our annual audits of the entire corporation.

The Court: If you can get this information, page 452 $\frac{1}{2}$ from the audit. I do not mean the full audit of the corporation, but I am talking about dealing with this \$20 million that you have alleged that you have done. That is before the jury, \$20 million.

Mr. Allen: Give them a breakdown of it?

The Court: Give them a breakdown on those contracts.

Mr. Fred G. Pollard: They put in yesterday a statement, and you have it on your desk here—

The Court: I haven't had a chance to look at that, and it hasn't been admitted into evidence. It was passed by.

Mr. Fred G. Pollard: That is right. That brings it up

A. Hamilton Bryan.

through the year December 31, 1949. We want that same information for 1950.

Mr. Robertson: We are perfectly willing to do that.

Mr. Allen: We will furnish the breakdown.

Mr. Fred G. Pollard: That isn't a breakdown of the gross business.

They have also testified that they made \$58,000 on these jobs in Kentucky and West Virginia. That is the only work the corporation did in those States.

Mr. Robertson: We have no objection to giving them that.

Mr. Fred G. Pollard: We certainly ought to have the returns as to that information, because we want to page 453 $\frac{1}{2}$ see if they actually reported as much income as they claim to make.

Mr. Robertson: The Court has already ruled on that. We will get the audit.

Mr. Mullen: I think we are entitled to the audits.

Colonel Harris: Aren't we also entitled to the books? We can hire public accountants. We don't have to let them go off and make summaries.

The Court: I think you are entitled to inspect the books in regard to these contracts.

Mr. Allen: That is all right.

Colonel Harris: And have CPA's go over them.

The Court: All right.

Mr. Fred G. Pollard: We are also entitled to this information: Part of the alleged profits from the work at Pond Creek and Island Creek has got to be allocated to overhead. We don't know—

Mr. Robertson: They don't know anything about that. He is making wild statements. The auditor has determined that.

The Court: Go ahead, Mr. Pollard.

Mr. Fred G. Pollard: It is not all net profit if part of that has to go to pay overhead.

The Court: That is something you can determine from the figures and the books which you will see.

page 454 $\frac{1}{2}$ Mr. Mullen: We will examine the books for those purposes, and see the whole thing.

The Court: That is true.

Mr. Mullen: And from that, we will get their net income from everything.

Mr. Fred G. Pollard: To allocate, to make the proper allocation.

The Court: The books will show how they arrived at this profit; and if your auditors, after inspecting the books, have

A. Hamilton Bryan.

a different idea of the situation, then, of course, they would interpret it as they saw fit. It would be a question then for the jury.

Mr. Allen: If Your Honor please, I think I might say this for the information of all of us: As I understand the law concerning voluminous books and that sort of thing, their auditor or our auditor can make summaries of the books and come in court and testify to them. They can get an auditor and he can go there and make up a summary and give us a copy, and testify to it. That is my understanding of the law.

Mr. Mullen: Now you are talking about a very different thing from what you were talking about the other day, about summarizing papers. The rule is that prolonged accounts, and things like that, can be summarized by a CPA.

Mr. Allen: I admit that, but I say it is not page 455 } confined to books, but that is neither here nor there.

Mr. Robertson: Let's talk about this one.

Mr. Allen: We are talking about this one now.

The Court: When can you gentlemen make those books available?

The Witness: Your Honor, I would like to have it understood that any inspection of the books will be done in the presence of our representatives, and they will not be turned over to them. We will prepare for them a detailed statement showing our gross sales on each job in the last ten years. We will show where the information came from so it can be checked. We will also show not only the gross sales on the work for these companies in West Virginia and Kentucky, each job, but what the costs were and what the net job operating profit was, in order to support the statement we put in. That is what they are after.

When it comes to overhead expenses and net profit from operations, and so forth, we think that goes beyond the scope of their examination. We did put in this statement to support the fact that we had an established business, showing that there was \$20 million of business. That is not a complete statement. Actually, it amounts to more than \$20 million. They want to verify that, and that will be verified and shown.

We also said that we had a job profit from this page 456 } work in West Virginia and Kentucky. Regardless of what happened on our operations as a whole, if we hadn't had this job profit on the work in West Virginia and Kentucky, we would have been \$58,000 worse off than we

A. Hamilton Bryan.

are today. That is the material point. That is what they want us to establish, to prove.

That, we are prepared to prove. If we have made a mistake in compilation of figures, it will be corrected. I don't think that we have.

Mr. Allen: When can you make the books available to them; say, Saturday and Sunday?

The Court: When would you gentlemen like to have the books?

Colonel Harris: Judge, we will get in touch with our auditors when we get through court this afternoon, if possible, and find out from them how much time, and when; but we don't think that our auditors should be handicapped by having their auditor or anybody else their interfering or overhearing any conversation.

Mr. Robertson: Not interfering; just watching.

The Witness: The books will be made available at our office. We are not going to turn the books over to them.

Colonel Harris: The books will be made available wherever Your Honor says.

The Court: That is true. The Court wants to page 457 $\frac{1}{2}$ be reasonable.

The Witness: It is a big job.

The Court: We have to be reasonable about all things.

Mr. Fred G. Pollard: Judge, this is a handicap. We asked for this information last summer, and they objected to it; and Your Honor ruled that they didn't have to give it. It is going to take some time to make an analysis, and we think we asked for it in time.

Mr. Robertson: So what?

The Court: If the analysis isn't complete, the Court would give you an opportunity to put Mr. Bryan back on the stand at a later date to pursue this line of cross examination.

The Witness: I will call our people down there right now and ask them to start compiling it.

The Court: I think it would be reasonable to ask your auditors to review the books in his office. I think that is a reasonable request.

Mr. Fred G. Pollard: All right, sir.

Is it our understanding that they can see any books they want?

The Court: They can see any books they want, but not the tax returns.

Mr. Robertson: Any books they want relating—

A. Hamilton Bryan.

The Court: Relating to the \$20 million.
 page 458 { Mr. Mullen: The books of account.

The Witness: Not all portions of the books, but the parts that show how the \$20 million came about.

The Court: They are entitled, in my judgment, to determine whether or not on this \$20 million worth of business there was a profit or loss, because before this jury there is the figure of \$20 million, big money, and I don't think they should be permitted to speculate how much profit is in that \$20 million. Some might say, "He made \$250,000 over there." Some might say, "He made \$100,000." I think they are entitled to know all the facts concerning that figure.

Mr. Fred G. Pollard: I understand Your Honor's ruling is that we cannot have the tax returns?

The Court: As presently advised, that is my ruling.

Mr. Fred G. Pollard: We except to that ruling, because we think that if the tax returns show a different figure from what Mr. Bryan has testified to, the jury is entitled to know that he reported something different from what he testified to.

The Court: All right.

Mr. Robertson: The Plaintiff excepts to the ruling of the Court requiring the Plaintiff to show its overall net profit or loss upon the complete operation, upon the ground that it is irrelevant in this case. The Plaintiff readily
 page 459 { admits that the defendants are entitled to a breakdown of the \$20 million gross business, and are entitled to a breakdown showing the job profit or loss on all work done by the Plaintiff for Island Creek Coal Company, Pond Creek Pocahontas Company, and their associated and affiliated companies. The Plaintiff denies that they have any legal right to extend the scope of the inquiry beyond those matters.

Mr. Allen: Plaintiff excepts upon another ground, namely, that the information is not timely demanded. We are now during the fourth day of the trial. Mr. Bryan's presence is necessary at every moment of the trial. We are trying the case from 10:00 to 5:00 every day, and we haven't the time to get the necessary information or the time to have available men present when the information is being gotten by Defendants' auditors from the books.

Mr. Mullen: In answer to Mr. Allen's statement, counsel for the Defendants states that the necessity for these figures was brought about by evidence given by the Plaintiff on the stand, in addition to the fact that they were asked for last

A. Hamilton Bryan.

summer; but the immediate necessity was brought about by the testimony of the Plaintiff. We did not choose the time.

Mr. Allen: With further reference to the timely motion, we think this information involves something like 200 jobs which have nothing to do with the jobs now under page 460 } investigation.

Mr. Fred G. Pollard: Your Honor, do I understand that you have ordered Plaintiff to furnish a similar statement for the year 1950?

The Court: Yes. You have agreed to do that, as I understand, as contained in Plaintiff's Exhibit 22. This is the exhibit you are referring to?

Mr. Fred G. Pollard: Yes.

The Court: You want it brought up to date through 1950?

Mr. Fred G. Pollard: Yes, sir.

The Court: As I understand, you gentlemen have agreed to furnish that information.

Mr. Fred G. Pollard: We still object to the introduction of Exhibit 22.

The Court: Do you all wish to be heard further on this? We passed it by, to save time, yesterday.

Mr. Robertson: They can't except to it and call for it at the same time. They have to make up their minds.

Mr. Fred G. Pollard: If it is introduced, we are entitled to the full information.

Mr. Mullen: It was introduced enough by questions to the Plaintiff to cover what we are asking for.

Mr. Allen: This hasn't been filed in evidence.

The Court: It has not been admitted in evidence. page 461 } dence. It has been marked.

Mr. Allen: We withdraw our motion to file it in evidence, then.

The Court: He withdraws the motion to file it in evidence.

Mr. Mullen: I have it right here in the questions. I looked it up just now.

The Court: There is a statement in evidence showing that you did \$20 million worth of business.

Mr. Allen: Are you objecting to the admission in evidence of this construction record, May, 1942, to December, 1949?

Mr. Mullen: Have we a copy of it?

Mr. Fred G. Pollard: Yes.

The Court: Yes, I think Mr. Robertson gave you a copy of it.

Mr. Mullen: I don't know that I have seen it.

The Court: He gave it to Mr. Pollard.

A. Hamilton Bryan.

Mr. Allen: I just want to know if you are objecting to it. If you are objecting to it, we certainly have a right to withdraw it. If you are not objecting to it, well and good, let it stay.

Mr. Fred G. Pollard: The damage was done, Your Honor, as far as we are concerned, when the Plaintiff was allowed to testify that he had done \$20 million worth of
page 462 } business over a period of ten years.

Mr. Allen: My simple question is: Are you still objecting to the introduction of this in evidence?

(Defendants' counsel conferring.)

Mr. Mullen: Let us confer a few minutes.

The Court: Very well, we will recess for a few minutes while all counsel confer.

(Short recess.)

Mr. Mullen: If Your Honor please, we withdraw any objection to the introduction of it.

The Court: All right. The Court will admit it.

Mr. Allen: Describe it, so there isn't any question.

Mr. Moore: It is already described as Exhibit 22.

The Court: The Court will admit in evidence Plaintiff's Exhibit No. 22.

(The document previously marked Plaintiff's Exhibit No. 22 was received in evidence.)

Mr. Allen: We understand there is no objection to the admission of this exhibit in evidence.

page 463 } (The following proceedings were had in open court:)

Mr. Robertson: If Your Honor please, and gentlemen of the jury, we were diverted from discussion of Plaintiff's Exhibit No. 34 yesterday before we finished going through with it.

The Court: Gentlemen, we will poll the jury to see if they are all present. Let the clerk call the roll.

(Roll call of the jury.)

The Court: Now, Mr. Robertson, you may proceed.

Whereupon,

ALEXANDER HAMILTON BRYAN

the witness on the stand at time of recess, resumed the stand and testified as follows:

Mr. Robertson: I refer now to Plaintiff's Exhibit No. 34, to the Contract dated June 29, 1948, for the construction of Brookside and Valley View stores, Delbarton, West Virginia, at \$66,486.05, which showed a loss of \$2,617.90.

Still referring to Exhibit No. 34, the next item is dated September 19, 1948, for the construction of an appliance warehouse at Holden, West Virginia, at \$40,895.89, which showed a job profit of \$6,814.24.

(Document shown to Defendants' counsel.)

Mr. Mullen: Of course, Your Honor, we are simply seeing them, not admitted.

page 464 } By Mr. Robertson:

Q. I hand you what purports to be a signed copy of the contract I have last mentioned and ask you if that is an executed copy of that contract.

A. Yes. The contract amount is \$36,000. The actual amount of work after extras and so forth was \$40,845.85.

Mr. Robertson: I offer the contract in evidence and ask that it be marked Plaintiff's Exhibit No. 38.

(The document referred to was marked Plaintiff's Exhibit 38 and received in evidence.)

Mr. Robertson: The next Item on Exhibit 34 is dated October 21, 1948, for store No. 15, Holden, West Virginia. The amount of the job is \$34,313.31, showing a job profit of \$7,450.32.

(Document shown to Defendants' counsel.)

By Mr. Robertson:

Q. I hand you what appears to be an executed copy of the contract I have first mentioned and ask you if that is an executed copy of that contract?

A. Yes, that is an executed copy of the contract.

Alexander Hamilton Bryan.

Mr. Robertson: I offer the contract in evidence and ask that it be marked Plaintiff's Exhibit No. 39.

(The document referred to was marked Plaintiff's Exhibit 39 and received in evidence.)

Mr. Robertson: The next item on Exhibit 34, page 465 } dated December 9, 1948 is for a colored lunch room at Holden, West Virginia. The amount of the job being \$9,550.39, showing a job profit of \$795.56.

(Document shown to Defendants' counsel.)

By Mr. Robertson:

Q. I hand you what appears to be an executed copy of the contract I have last mentioned and ask you if that is an executed copy of that contract.

A. Yes, sir.

Mr. Robertson: I offer the contract in evidence and ask that it be marked Plaintiff's Exhibit No. 40.

(The document referred to was marked Plaintiff's Exhibit 40 and received in evidence.)

Mr. Robertson: The next item on Exhibit 34 is a contract dated December 13, 1948, for a hearing plant at Tipple No. 25, Dellarton, West Virginia, at \$21,236.05, which showed a net profit of \$406.36.

(Document shown to Defendants' counsel.)

By Mr. Robertson:

Q. I hand you what appears to be an executed copy of an order for that job and ask you if that is an executed copy upon which the job I have last mentioned was done.

A. That is right.

Mr. Robertson: I offer the order in evidence and ask that it be marked Plaintiff's Exhibit No. 41.

page 466 } (The document referred to was marked Plaintiff's Exhibit 41 and received in evidence.)

Mr. Robertson: The next contract is dated June 4, 1949,

Alexander Hamilton Bryan.

for an addition to the rear of store No. 28 at Holden, West Virginia, at \$4,021.06, showing a job profit of \$909.78, and on the exhibit by the date is marked "oral".

By Mr. Robertson:

Q. Was that work done under oral agreement or written agreement?

A. That was done under an oral agreement. After the work was performed we submitted a bill and it was paid.

Mr. Robertson: The next item on Exhibit 34 is dated October 28, 1948, for the coal preparation plant in Breathitt County, Kentucky, at \$265,370.09, showing a job profit of \$10,232.48.

By Mr. Robertson:

Q. Is that the contract of October 28 which already has been introduced in evidence?

A. That is right.

Q. Is that the contract upon which the ceiling fee of \$12,000 was stipulated?

A. That is correct.

Q. How does Exhibit 34 show a job profit of only \$10,232.48?

A. We had some direct job expenses that were page 467 } not reimbursable. They were mostly travelling expenses in connection with that work. Then there were some other items, I think, in connection with the commissary and the barracks.

Mr. Robertson: The next item on Exhibit 34 is a contract dated December 15, 1948, for 25 dwellings, Breathitt County, Kentucky, \$41,282.05, showing a job profit of \$1,946.99.

By Mr. Robertson:

Q. Is that the contract of December 15, 1948, for the 25 dwellings that already has been put in evidence?

A. That is correct.

Mr. Robertson: The next item on there is a contract dated December 8, 1948, for telephone line, Breathitt County, Kentucky, at \$4,591. 59, which shows a job profit of \$218.68.

By Mr. Robertson:

Q. Is that the telephone line that you have testified about for which the contract is already put in?

Alexander Hamilton Bryan.

A. Yes, sir.

Mr. Robertson: The next job date is marked July, 1949, for a school house, Breathitt County, Kentucky. The amount of work on it is \$637.16, showing a job profit of \$30.33, and by the side of it is marked "oral".

By Mr. Robertson:

Q. Is that the agreement or contract for the construction of the school house about which you have already testified?

A. That is the part of the work that Mr. Salvati page 468 } agreed, additional work, that we would do on a cost plus 5 per cent basis.

Mr. Robertson: The next job number on Exhibit 34 is dated June 28, 1949, for a job at Bartley Boiler Plant, Bartley, West Virginia, at \$67,158.20, showing a job profit of \$21,787.37.

(Document shown to Defendants' counsel.)

By Mr. Robertson:

Q. I hand you what appears to be an executed copy of the agreement I have last mentioned and ask you if that is an executed copy of that agreement?

A. Yes, this is an executed copy of the agreement, but there was a supplemental agreement which followed it.

Mr. Robertson: I offer the agreement in evidence and ask that it be marked Plaintiff's Exhibit No. 42.

(The document referred to was marked Plaintiff's Exhibit 42 and received in evidence.)

Mr. Robertson: All the items about which you have testified on Exhibit 34, as appears from the exhibit, show an aggregate construction value of \$651,192.84, and a total job profit of \$58,714.26.

(Document shown to Defendants' counsel.)

By Mr. Robertson:

Q. A moment ago you stated that there was an agreement

Alexander Hamilton Bryan.

which supplemented the agreement of June 28, page 469 } 1949, for the Bartley Boiler Plant at Bartley, West Virginia, and I hand you what appears to be an executed copy of an agreement and ask you if that is the supplementary agreement to which you referred.

A. This supplementary agreement is dated July 5, 1949, and it supplements the first agreement dated June 28, 1949, which you have already offered in evidence.

Mr. Robertson: I offer this supplemental agreement in evidence and ask that it be marked Plaintiff's Exhibit No. 43.

(The document referred to was marked Plaintiff's Exhibit 43 and received in evidence.)

By Mr. Robertson:

Q. Mr. Bryan, I call your attention to the fact that the agreement of June 28, 1949, and also the supplemental agreement referred to work at the Bartley Boiler Plant, Bartley, West Virginia. Was that work which you were completing in that agreement and this supplemental agreement after you were run off the job in Breathitt County, Kentucky?

A. There is a typographical error in this statement. It is really the Bartley Boiler Plant, not Bartlet. The work was awarded to us under the agreement dated June 28, the agreement dated in June, 1949, and then the supplemental agreement in July, 1949. We did not actually complete that work until December 31, approximately the end of the year 1949.

Q. But you were not run off that work as you page 470 } were from the work in Breathitt County?

A. No.

Q. Mr. Bryan, at my request is Mr. Cassidy, the Richmond handwriting expert, now making an examination to ascertain whether or not the application blanks mentioned here yesterday are true or untrue so far as the signatures are concerned?

A. At the present time he is comparing the signatures on the application blanks with signatures which we have and which we know to be genuine.

Q. Will he make himself available as a witness at a later stage of the trial?

A. He said he would be ready by tomorrow.

Q. At my request have you prepared a list of the laborers who were employed at the job site in Breathitt County, Kentucky, on July 26, 1949?

A. Yes, sir; as shown on the payroll.

Supreme Court of Appeals of Virginia.

Alexander Hamilton Bryan.

Q. Does that show them by name?

A. Yes, sir.

Q. Will you read the names into the record from the payroll?

A. Labor foremen?

Q. Everybody.

A. Lee Bach.

page 471 } These are the laborers: Dan Combs, Hargus H. Howard, Jerry Barnett, Green Trusty, Donald B. Trimble, Avis Salyers, Matt Miller, Green Stacy, Green Conley, Luther Litteral, Ossie Lovely, Earnest Howard, John Jordan, Burl King, George P. Miller.

Q. Does it also show the other laborers who were working there that day and other people who were working there that day?

A. Yes, I can give the names of everybody.

Q. Will you just give the names of everybody and what their job was?

A. Superintendent Cecil M. Delinger.

Chief Clerk Maynard C. Ragan.

Iron Workers: John W. McClellan, Carl B. Rice.

Hoist Operator: D. T. Miller.

Millwright Foreman: Harold Goad.

Millwrights: Charles L. Bassam, E. H. May, Lowell H. May.

Carpenter Foremen: Henry Starr, Howard Williams, Charles Patrick.

Carpenter Layout Man: Thomas Greene.

Carpenters: Jack Patrick, M. F. Sublett, N. Hackworth, Verner Conley—

Mr. Mullen: What did you say Hackworth?

The Witness: Yes.

page 472 } Mr. Mullen: What is his first name?

The Witness: His first name is Norman.

Harrison Daniels, Lonnie Dixon, Alfred Dorson, M. M. Price, Robert Poe, Robert Hackworth, J. E. Hackworth, W. P. Wright, Otto Preston, Clarence Endicott, Grant Davis, B. F. Pelphrey, H. H. Hounshell, Roger H. Ray, Charles Collett, Thomas Arms, John T. Arnett, Tomie Wireman, Wishard Lemasters, Homer Salyer, Charles Marshall, Harry J. Watson, LeGrand Mayo, Chester Trimble, Bert E. Preston, Jr. Take Bert Preston out. He wasn't working at that time.

Estle Robinson, Paris Trimble, Lindon Higgins, Edmond Dobbins, Leslie I. Myers.

Alexander Hamilton Bryan.

Painter: Walter S. Moore, Jr.

Electrician Foreman: Carl Patrick.

Electricians: Hulbert Bailey, Clarence H. Patrick and William E. Patrick.

That was all for July 26.

By Mr. Robertson:

Q. How many is the sum total of that if it is shown there, where you can get it by glancing at it?

A. I have it in another place, I think. 64 people.

Q. Were any of those working up at the top of the mountain at the head house and up around there?

A. Yes, sir.

Q. As I understand, none of those up on top page 473 $\frac{1}{2}$ of the mountain were bothered.

A. No, they continued working.

Q. They were all delivering coal. How many were working, including the tippie, the residences and the school house, everything except up on top of the mountain?

A. Thirteen people were working on top of the mountain: 8 carpenters, 1 carpenter foreman, a hoist operator, and 3 laborers.

Q. That would be how many down below?

A. On the tippie there were 41 people working: 2 iron workers, one millwright foreman, one millwright, one carpenter foreman, one carpenter layout man, 18 carpenters, one labor foreman, 12 laborers, and 4 electricians.

Q. How many were working at the school house?

A. Seven people: 1 carpenter foreman and 6 carpenters.

Q. How many were working at the 25 residences?

A. A painter and apprentice.

(Documents exhibited to Defendants' counsel.)

By Mr. Robertson:

Q. I hand you now what appears to be the Laburnum Construction Corporation payroll for the week ending July 31, 1949, in four sheets, and I will ask you if that is a copy of a part of the payroll from which you testified a moment ago.

A. This is a copy of our payroll for the week ended July 31, 1949, for our jobs 322, 323, 326, and 340, all page 474 $\frac{1}{2}$ in Breathitt County, Kentucky.

Q. Is this a copy of what you testified from, of the original payroll?

Alexander Hamilton Bryan.

A. The original was prepared on a stencil which we still have, and this was run off the same stencil.

Mr. Robertson: I offer these four sheets in evidence collectively and ask that they be marked Plaintiff's Exhibit No. 44.

(The documents referred to were marked Plaintiff's Exhibit 44 and received in evidence.)

(Document shown to Defendants' counsel.)

By Mr. Robertson:

Q. I hand you now what appears to be the payroll for the week ended July 31, 1949, in two sheets for the Virginia Mechanical Corporation and ask you if that is a copy of one of the payrolls from which you testified.

A. Yes. The Virginia Mechanical Corporation is a wholly owned subsidiary of Laburnum, and electricians appeared on the payroll of the Virginia Mechanical Corporation. This is the payroll for the week ended July 31, 1949, on the work in Breathitt County, Kentucky.

Mr. Robertson: I offer the two sheets in evidence collectively and ask that it be marked Plaintiff's Exhibit 45.

(The documents referred to were marked Plaintiff's Exhibit 45 and received in evidence.)

page 475 } By Mr. Robertson:

Q. Mr. Bryan, after you were run off the work in Breathitt County, Kentucky, and after your interview with Mr. David Hunter at Pikeville, about which you have testified, on August 5, 1945, did you continue for a time to submit bids for work to Island Creek Coal Company and Pond Creek Pocahontas Company and their associated and affiliated companies?

A. Yes, we were invited to submit proposals for a while.

(Document exhibited to Defendants' counsel.)

page 476 } By Mr. Robertson:

Q. Mr. Bryan, I hand you a carbon copy of a letter dated September 5, 1949, from A. Hamilton Bryan, President, to Pond Creek Pocahontas Company, Holden, West

Alexander Hamilton Bryan.

Virginia, and ask you if that is a proposal by Laburnum Construction Corporation to Pond Creek Pocahontas Company to furnish labor and materials for the installation of a heating plant in connection with the coal preparation plant at the No. 1 Kentucky Mine for the lump sum of \$25,595?

Colonel Harris: We object to it, if the Court pleases, on the ground it is immaterial and irrelevant and incompetent. He didn't get the contract. He didn't do the work. He didn't make any profit on something that he didn't do.

Mr. Robertson: If Your Honor please, that is the same point you have ruled on repeatedly. It is in the trial brief. We are going to show here that he submitted a series of bids, and finally I am going to introduce here a letter from the Pond Creek Pocahontas Coal Company telling him as long as the situation existed, he need not bid any more. In short, they broke up the connection.

The Court: The Court will overrule the objection and admit the paper for what it is worth.

Mr. Mullen: Will you note an exception, Your Honor, and that it continues as to this line of testimony?
page 477 } The Court: All right.

The Witness: This is a part of the work that Mr. Salvati had agreed we would have on the basis of cost plus 5 per cent. After our contract was terminated and we moved away, we were asked to submit a lump sum proposal, and we did it in this letter.

Mr. Robertson: I offer the letter in evidence, and as that it be marked Plaintiff's Exhibit No. 46.

(The letter referred to was marked Plaintiff's Exhibit No. 46 and received in evidence.)

By Mr. Robertson:

Q. What was the lump sum estimate in that letter?

A. We were to prepare drawings and specifications for the heating plant and submit them to Pond Creek for approval. Based on our idea of what would be required as shown on the plans and specifications, we said we would do it for \$25,595.

Q. At cost-plus, or what?

A. No, that would be a fixed price.

(Document exhibited to Defendants' counsel.)

Alexander Hamilton Bryan.

By Mr. Robertson:

Q. Mr. Bryan, I hand you a carbon copy of a letter dated September 7, 1949, unsigned but typed: "Sincerely yours, President," addressed to Pond Creek Pocahontas Company at Holden, West Virginia, and ask you what that is?

A. This was a letter submitting a proposal for page 478 $\frac{1}{2}$ the construction of one cement block store building and two 6-room frame dwellings, and 12 five-room frame dwellings, at Evanston, Kentucky. They were a part of the buildings that Mr. Salvati agreed we would do on the basis of cost plus 5 per cent.

After we moved away and our other contract had been terminated, they asked us to submit a lump sum proposal.

Q. What was the lump sum of that proposal?

A. The lump sum proposal was \$205,047. However, it was conditioned in various ways.

Q. Did you get the work?

A. No.

Q. Did you get the work that you mentioned there in Exhibit No. 46 for the heating plant at No. 1 Kentucky Mine in Breathitt County, Kentucky?

A. No.

Mr. Robertson: I offer the letter of September 7, 1949, in evidence, and ask that it be marked Plaintiff's Exhibit No. 47.

(The letter referred to was marked Plaintiff's Exhibit No. 47 and received in evidence.)

By Mr. Robertson:

Q. Mr. Bryan, I hand you a carbon copy of a letter dated September 29, 1949, typed "Sincerely yours, President," addressed to Pond Creek Pocahontas Company, Holden, West Virginia, having attached to it a sheet dated September 29, 1949, entitled "Proposed Addition to Store Building, Pond Creek Pocahontas Company, Bartley, West Virginia," and ask you what that is?

A. We were asked by Pond Creek Pocahontas Company to submit a proposal to construct an addition to a store at Bartley. There were no drawings and specifications. We had more or less to imagine what we thought they wanted.

We wrote this letter dated September 29, 1949, and made a proposal to perform the work on a cost-plus basis. We also said that we estimated that the work would cost \$28,877, and we would perform it for that lump sum amount, provided we

Alexander Hamilton Bryan.

had time to fix drawings and specifications so that there couldn't be any misunderstanding as to what the work included.

Q. Was that work awarded to the company?

A. No. We never heard from it.

Mr. Robertson: I offer the two sheets in evidence, and ask that they collectively be marked Plaintiff's Exhibit No. 48.

(The documents referred to were marked Plaintiff's Exhibit No. 48 and received in evidence.)

By Mr. Robertson:

Q. Did the Laburnum Construction Company on November 4, 1949, submit a proposal to Island Creek Coal Company for the construction of a community building near Ragland or Delbarton, West Virginia, for the lump sum of \$94,359?

A. Yes. We prepared an estimate for the cost page 480 $\frac{1}{2}$ of that work and gave an oral proposal of \$94,359 on or about November 4, 1949. We were soon advised, after that, that the Island Creek Coal Company decided to change the scope of the work entirely, and that no action would be taken, and that they were going to fix up some plans and send them to us and then we could submit another bid.

This work didn't go ahead on that basis.

(Document shown to Defendants' counsel.)

By Mr. Robertson:

Q. Mr. Bryan, I hand you a carbon copy of a letter typed, "Sincerely yours, President," dated November 23, 1949, to Pond Creek Pocahontas Company, Holden, West Virginia, and ask you what that is?

A. This is another proposal for the addition to the store at Bartley, West Virginia, \$37,308.

Q. Was that a lump sum proposal or cost-plus?

A. Yes, this was a lump sum proposal for the work generally for which we had submitted a prior proposal, but they decided to change it somewhat. This was a large job.

Q. Did you get the work?

A. No.

Mr. Robertson: I offer the letter in evidence, and ask that it be marked Plaintiff's Exhibit No. 49.

Alexander Hamilton Bryan.

page 481 } (The letter referred to was marked Plaintiff's Exhibit No. 49 and received in evidence.)

By Mr. Robertson:

Q. Mr. Bryan, I am speaking from memory, but my recollection is that during the early part of May, 1950, Island Creek Coal Company or Pond Creek Pocahontas Company invited Laburnum to take over its building program in West Virginia and Kentucky, and that we have introduced that letter in evidence. Is my memory correct?

A. You are correct. The letter was dated September 3, 1948.

Q. I am wrong in my date.

A. The letter related to Island Creek Coal Company's building program in West Virginia for the construction of churches, community houses, stores, beauty shops.

(Document shown to Defendants' counsel.)

By Mr. Robertson:

Q. I hand you now a carbon copy of a letter typed, "Sincerely yours, President," dated December 29, 1949, to Pond Creek Pocahontas Company, Holden, West Virginia, and ask you what that is.

A. We were asked by Pond Creek Pocahontas Company to submit a proposal for the construction of a gas station, a service station, at Bartley. We wrote a letter dated December 29, 1949, offering to do the work for \$5,596.

page 482 } Q. Was that a lump sum price?

A. It was lump sum proposal, and then we submitted an alternate proposal to perform the work on a cost-plus basis.

Q. Did you get the work?

A. No, sir.

Mr. Robertson: I offer the letter in evidence, and ask that it be marked Plaintiff's Exhibit No. 50.

(The letter referred to was marked Plaintiff's Exhibit No.

(Document exhibited to Defendants' counsel.)

By Mr. Robertson:

Q. Mr. Bryan, I hand you what appears to be a photostat of a letter under the Island Creek Coal Company letterhead, dated May 18, 1950, from R. E. Salvati to you as President of the Laburnum Construction Company, and ask you if you received the original of that letter?

Alexander Hamilton Bryan.

Mr. Mullen: Your Honor, we object. That letter was purely a self-serving declaration solicited by the Plaintiff long after this suit was brought. It shows plaintiff what it was for. It was in May, 1950. This suit was brought in December, 1949. This letter is purely a self-serving declaration.

Mr. Robertson: Are you through?

Mr. Mullen: I am through for the time being.
page 483 } Mr. Robertson: It is the same old objection

which Your Honor has ruled on time and again.
It is a letter from Salvati to Bryan, telling him there is no use to bid any more and not to do it. I offer it to show that these people destroyed this business connection.

Mr. Mullen: I still say, Your Honor, it was after this suit was brought, something that happened subsequent to the suit. It was solicited by the Plaintiff, of Salvati. It plainly shows it was solicited for the purpose of this suit.

Mr. Robertson: This all goes to the weight of it.

The Court: I will overrule the objection and admit it for what it is worth.

Colonel Harris: We reserve an exception, at this time.

The Witness: Yes, this is the letter.

Mr. Robertson: I offer the letter in evidence, and ask that it be marked Plaintiff's Exhibit No. 51.

(The letter referred to was marked Plaintiff's Exhibit No. 51 and received in evidence.)

Mr. Robertson: I ask to read this letter to the Jury:

"ISLAND CREEK COAL COMPANY

R. E. Salvati
President

Huntington
West Virginia

May 18, 1950

page 484 } Mr. A. Hamilton Bryan, President
Laburnum Construction Company
Richmond, Virginia

Dear Mr. Bryan:

I have seriously considered your bidding on the recreation building and church at Rockhouse. Since I talked to you, I

Alexander Hamilton Bryan.

find that we have about four or five other reputable and well qualified concerns, which have contracts with the United Mine Workers, that are going to bid. In view of this situation, it seems to me that it would be better that you refrain from bidding because of the facts outlined to me in our conversation Monday evening.

I regret that these circumstances prevail, but I believe it is better to go along with the suggestion which I have outlined.

I was glad to have an opportunity to talk and be with you. With kindest regards.

Sincerely,

R. E. SALVATI."

(Document exhibited to Defendants' counsel.)

By Mr. Robertson:

Q. Mr. Bryan, I hand you a carbon copy of a letter dated May 23, 1950, signed "A. Hamilton Bryan, President," to Mr. Salvati, and ask you if that is your reply to the letter I have just read?

page 485 1/2 Mr. Mullen: If Your Honor please, we object to that. That is not a letter from Salvati, as they argued the other. This is a letter written by the Plaintiff after this suit was brought, written to Mr. Salvati. It contains an argument about why he can't bid, and so forth. It certainly is not proper in this suit.

Mr. Robertson: I think it might be well for the Court to read it.

The Court: Let me see the letter, please.

(The Court examining document.)

Mr. Robertson: I withdraw the letter, Your Honor, if they object to it.

The Witness: Your Honor—

The Court: It is withdrawn.

The Witness: Your Honor, may we adjourn court a minute?

The Court: Yes. Court will recess, gentlemen, for five minutes.

(Brief recess.)

Alexander Hamilton Bryan.

page 486 } (The following proceedings were had in chambers.)

Mr. Fred G. Pollard: Judge, Plaintiff's Exhibit No. 49 is a letter dated November 23, 1949, addressed to Pond Creek Pocahontas Company, Holden, West Virginia. Mr. Bryan testified he signed it as President of Laburnum Construction Corporation. The last sentence reads: "We thank you for having given us an opportunity to submit this proposal."

That was done on November 23, 1949. This suit was instituted on November 16, 1949. By the Plaintiff's own exhibit, it shows that the business relation was not destroyed at the time the suit was instituted. Therefore, we move that the jury be instructed to disregard any evidence after the date the suit was instituted, because it is shown here that the business relation still existed at the time the suit was brought.

We would like also to move the Court to exclude any evidence in the future that might be offered as to what transpired.

Mr. Robertson: I can't hear you.

Mr. Fred G. Pollard: Since the date the suit was instituted.

Mr. Robertson: I didn't hear your last statement. Will you speak a little louder?

Mr. Fred G. Pollard: Would you read that to Mr. Robertson?

page 487 } (The statement referred to was read by the reporter.)

Mr. Robertson: If Your Honor please, since he is taking that tack, I think I will just go ahead and offer the exhibit, because I think it is all admissible. He is trying to get rid of the letter where Salvati told us not to bid any more. We claim that is the culmination of being run off the job; that it destroyed this relationship. Everything he says goes to the exhibit and stand my ground on it.

Mr. Mullen: If the suit was brought in November, that suit has to be based on an existing injury. It can't relate to something that happens after that. Your injury, then, as claimed, was lost on work on this job, not future work, not business connections. You hadn't lost it.

Mr. Robertson: Judge, I am not sure what I want to do on that. Will you give me a few minutes to confer?

Alexander Hamilton Bryan.

Mr. Fred G. Pollard: May I turn this exhibit over to the reporter?

The Court: Yes.

(Counsel withdraw for separate conference.)

Mr. Robertson: We think the evidence is admissible as confirming and showing the destruction of the business relationship.

Mr. Allen: If Your Honor, please, the situation is this, as I see it: Without respect to the particular page 488 } form of the testimony, it must be true that we should be able to show anything that happened afterwards that confirms the fact that the business connection is destroyed permanently. On the other hand, if Mr. Bryan and these companies out there had gotten back together and the business had been revived and they were now giving them contracts freely, they certainly would be permitted to show that.

Mr. Fred G. Pollard: There wouldn't be any litigation.

Mr. Allen: They would be permitted to show that the business connection had not been destroyed.

The object of evidence like this is to show that Mr. Bryan has been continually trying and doing his best to get that business, and has been unable to do it, even up to this date; that it has destroyed permanently that connection. Anything that shows that, that is in the proper form, is admissible.

Mr. Mullen: You have to go to the date of the suit, the date the suit was instituted. That is the only thing you can bring the suit for; not for something future. At the date the suit was instituted, the connection had not been broken. He has already testified, as shown by his recent testimony, that he has bid and bid and bid. Nobody knows why—we know why some of them weren't accepted. It was because he was the high bidder. But it is something in the future, page 489 } You certainly can't bring a suit today and claim something that happens in the future is the pain for which you are suing.

Mr. Allen: If Your Honor please, we don't want to argue about things that we don't consider so material. This doesn't mean anything in this case, anyway. We think it is legitimate evidence. We think we are entitled to it. If they object to it seriously, we just withdraw it.

Mr. Fred G. Pollard: No, Your Honor. That evidence has been introduced and the Court has ruled on it, and we don't want it withdrawn.

Alexander Hamilton Bryan.

The Court: I thought that was your motion.

Mr. Fred G. Pollard: No, sir. Our motion was to tell the jury that any evidence that has come in on the business relationship of the Plaintiff with the Coal Companies after the date the suit was instituted is to be disregarded by them, and not to allow any more testimony on that point.

Mr. Robertson: You either have to strike it out or leave it in. You can't make your decision—

Mr. Fred G. Pollard: We want it all stricken, anything he has testified to after the date the suit was instituted.

Mr. Mullen: Strike it out. Striking it out and withdrawing it after you have read it are two very different things.

Mr. Allen: Your Honor, we must not confuse page 490 } the principle here with the one that when you bring a suit for damages, your damages are limited up to the time that the action started unless it is a continuing thing that results in more damages. You can show your damages all along. You can show whether they are permanent or whether they are temporary.

All of this goes to show the nature of the damages suffered, whether they were temporary or permanent.

I merely offered to withdraw it just to save time and get along. If they don't want it withdrawn, then we say let it stay in.

Mr. Mullen: We have stated what we want.

The Court: Do you contend that you are entitled to any damages after the suit was instituted?

Mr. Allen: We are not entitled to any damages that arose out of something that was done after this suit was started. There isn't any question about that. But we are entitled to damages for what was done before the suit was started, and we are entitled to show whether those damages were temporary or permanent.

The object of this testimony is to show the nature of the damages; that they were permanent.

Mr. Fred G. Pollard: Your Honor, the damage hadn't occurred when the cause of action was instituted, because a week after the action was instituted, Mr. Bryan writes page 491 } to the Coal Company and says, "We thank you for giving us an opportunity to submit this proposal," which shows that the business relation had not been destroyed.

Mr. Mullen: He was never interfered with in West Virginia where he was making bids.

Alexander Hamilton Bryan.

Mr. Fred G. Pollard: He was still working in West Virginia.

The Court: Isn't that a question to argue before the Jury?

Mr. Robertson: Yes.

Mr. Mullen: I think it is a question of law.

Mr. Fred G. Pollard: The Jury is not entitled to consider any evidence—

The Court: Couldn't that be taken care of by proper instruction of the Court? It seems to the Court that the situation could be taken care of by proper instruction of the Court and by argument before the Jury.

I will overrule the motion.

Mr. Fred G. Pollard: We except, Your Honor.
page 492 } Mr. Mullen: Then we are going to object to
any further evidence being introduced occurring
subsequent to the suit.

Mr. Robertson: I didn't hear that.

Mr. Mullen: We are going to object to the introduction of any further evidence of occurrences subsequent to the bringing of the suit.

Mr. Robertson: Suppose you wait until we offer it. You might change your mind. You might find something helpful to you.

The Court: Do you gentlemen intend to offer any other evidence along this line?

Mr. Robertson: I don't think so, Your Honor, but I am not sure. I don't think so.

The Court: All right. Did you note your exception?

Mr. Fred G. Pollard: Yes, sir.

page 493 } (The following proceedings were had in open
court:)

By Mr. Robertson:

Q. Mr. Bryan, you have previously testified that after your men were run off the job on July 26, and after your efforts to get them to go back to work failed, you instructed your new superintendent, Mr. Veltry, to clean up the job and ship your equipment elsewhere. I think you testified that he did that. At my request have you ascertained from the payrolls how many men he employed to do that and how many days and who they were?

A. Yes, sir.

Q. Will you state first who they were?

A. During the week ended August 7, 1949, there were two

Alexander Hamilton Bryan.

men, iron workers, John W. McClellan and Carl B. Rice, who worked on August 4 and 5. During the next week, that is, the week ended August 14, 1949, we had the following men employed:

Superintendent, Louis G. Veltry. Chief Clerk, Maynard C. Ragan. Iron Worker Foreman, John W. McClellan, Iron Worker, Carl B. Rice. Carpenters: Harrison Daniels, Clarence Endicott, H. H. Hounshell, and John T. Arnett. All of those men worked from August 8 through August 12.

In addition to that we had the following Laborers: Donald B. Trimble, Hargis H. Howard, Green Conley, George England, and Arnold Sloan. Those men worked every day from August 8 through August 12. We also had Green
page 494 } Trusty, Dan Combs, and Burl King. They worked on August 8 and August 9.

Mr. Veltry and Mr. Ragan, of course, were also employed during the prior week. I don't think I named them.

(Document exhibited to Defendants' counsel.)

By Mr. Robertson:

Q. I hand you what appears to be a carbon copy of the Laburnum Construction Corporation payroll, in two sheets, for the week ended August 7, 1949, and ask you if that is a copy of the original payroll about which you have testified.

A. Yes, sir, this is a Ditto copy of the original payroll.

Mr. Robertson: I offer the two sheets in evidence collectively and ask that they be marked Plaintiff's Exhibit No. 52.

(The document referred to was marked Plaintiff's Exhibit No. 52 and received in evidence.)

By Mr. Robertson:

Q. I hand you what appears to be a copy of payroll, in two sheets, of Laburnum Construction Corporation for the week ended August 14, 1949, and ask you if that is a copy of the payroll about which you testified.

A. Yes, sir, it is a Ditto copy of that payroll.

Mr. Robertson: I offer the two sheets in evidence collectively and ask that they be marked Plaintiff's Exhibit No. 53.

page 495 } (The document referred to was marked Plaintiff's Exhibit No. 53 and received in evidence.)

Alexander Hamilton Bryan.

Mr. Robertson: If Your Honor please, that completes my examination of Mr. Bryan at this time, with these qualifications: After Mr. Cassidy has completed his examination about the applications that have been referred to here and has testified regarding them, I think it will be necessary to put Mr. Bryan on regarding that phase of the case, and also later on it is going to be necessary to put him back regarding the interrogatories and regarding some photostat evidence which more appropriately comes in at the end of our case-in-chief. I would like to put him back for those purposes later on.

Colonel Harris: If the Court pleases, before the cross examination begins, the Defendants ask the Court to instruct the witness to deliver to us now all the different batches of prepared testimony to which he has been referring for two or three days since he has been on the stand, and we also ask that Defendants' counsel be given sufficient time to read all those batches of prepared testimony.

Mr. Robertson: We welcome that, Your Honor, and they are welcome to it.

The Court: How much time will you need?

Colonel Harris: I haven't seen them. One of them looked like it had about thirty pages. The yellow one looked like it had five or six. Then there are two more batches. page 496 } I don't know how long they are. I haven't seen them.

The Court: Suppose we recess for five or ten minutes, and counsel for Plaintiff will furnish counsel for the Defendants copies of the various papers. Then the Court can determine how much time will be allotted for that purpose.

Colonel Harris: If the Court pleases, we want the exact papers that he has been reading from and referring to as he testified.

The Court: That was understood.

Mr. Robertson: I want this understood, too, Your Honor, that it is our contention that he has a right to look at them, but he hasn't a shadow of legal right for what he is asking now. We welcome the opportunity to give it to them and they may take them and keep them as long as they want them.

The Court: It was understood that you would receive these papers at the end of the examination.

Mr. Mullen: He knows we have a legal right to have them. The statement that we don't have a legal right is improperly made.

Alexander Hamilton Bryan.

The Court: Gentlemen, if they didn't have a legal right to them, I wouldn't let them have them.

Mr. Robertson: He might have availed himself of our courtesy.

The Court: It is a courtesy and it was agreed to. Then there was contention on the part of the Defendants that they had a legal right to it, and I don't know that it became necessary for me to rule on it, since the Plaintiff agreed to furnish them. Anyhow, they will receive the papers. We will recess for five or ten minutes, and then I can tell you when to come back.

All right, gentlemen, you may confer.

(Brief recess.)

page 498 } (The following proceedings were had in Chambers:)

The Court: Mr. Mullen has a statement he would like to make.

Mr. Mullen: I question their right, Your Honor, to put on Mr. Bryan's testimony piecemeal as they propose. I think we are entitled to have his evidence-in-chief put on as a whole so we know how to cross-examine. If we were to cross-examine on what is put in now and they still continue his examination in chief, the second part of it may make unnecessary what we say or may put an entirely different phase on what he said on cross examination. I don't think that they have a right to do that.

Mr. Robertson: If Your Honor please, of course the whole matter is completely within the discretion of the Court. Counsel for the Defendants announced yesterday that if we put in any interrogatories and answers, they were going to insist that all of them be read. We have not yet finished our analysis, which we are making anew of those interrogatories and answers, and therefore we haven't determined yet how we are going to meet that situation. We will determine it in due course.

I have already stated about the applications of the laborers. That is a minor phase of it which Mr. Cassidy, I understand, will be ready on tomorrow. We are going to put him on whether he says they are forgeries or whether he says they are genuine. We are going to let everybody know what they are. I don't know what he is going to say. I think he will say they are genuine, but if he says they are false we will put him on anyway.

The other evidence from him, so far as I know, will be what he may have to testify about the interrogatories—I don't mean the contents of them. I mean the way they were made up or something like that, and about the photostats, the way he got the photostats. I have no idea of going back through the merits of the case again. I think the logical place for that to come is at the conclusion of our case in chief. I don't think that this is the proper time for the Court to make a moot ruling that if we offer Mr. Bryan hereafter, the Court is not going to let him testify. I am perfectly willing to abide by our judgment of the Court as to what is the proper ruling when the time comes.

We have finished our case in chief with the exception of the records and those applications so far as I am now advised. Of course there may be some tag ends that I have overlooked that we would want to cover later on. At the moment I don't think of any, but that is customary and the approved practice in a case that covers the scope that this case is covering.

Mr. Allen: Let me say something so you can answer that, too, Colonel, before you start.

page 500 } If Your Honor please, I do not understand that a definite ruling has been made by the Court that if we introduce any of the interrogatories we have to read them all to the jury. I think that is open. While I don't want to argue that now, we are thoroughly prepared to show your Honor that that rule does not apply to interrogatories.

Mr. Robertson: Let me interrupt you just one moment. What we are really trying to do, Judge, we are trying to eliminate as much controversial matter as we can, to lessen the labor of everybody on those.

Mr. Allen: In other words, Your Honor, just to illustrate what Mr. Robertson says, in the interrogatories we asked questions relating to the official organ of the United Mine Workers. Then we asked a question asking them to produce them. They produced a batch of copies of the United Mine Workers Journal that thick (indicating).

Mr. Fred G. Pollard: At your request.

Mr. Allen: Do they mean to contend that we have got to sit here until next Christmas to read everything in the United Mine Workers Journal? We asked them to produce them and when they produce them there are certain things in there we want to read, only, and that is all we expect to read. That applies as it applies to exhibits filed with interrogatories, because interrogatories proper call just for questions and answers.

page 501 } Mr. Robertson: We don't have to argue that now.

Mr. Allen: I know, but I want the Judge to understand that that is the question, and we will be here forever if we have to read everything.

Leaving that for the moment, we have got to call Mr. Bryan back some time or other to testify on photostats of certain of the journals that they said they didn't have. They said they had only certain copies and they would furnish us what they had. What they didn't furnish we want to introduce, perhaps, just a very few photostats from the journal, photostats from the proceedings of the International Convention. It will be absolutely necessary for us to call Mr. Bryan back on those things which don't relate to anything that he has already been examined upon. In other words, we are not going to examine him on anything he has already been examined upon, and then if we put him back on for those limited purposes, they may cross-examine him with reference to the limited examination which we have conducted of him.

As Mr. Robertson has said, the order of testimony and the order of examination of witnesses is entirely within the discretion of the Court, and it is not reversible error. It doesn't make any difference what the Judge does about it. It just simply facilitates the trial, expedites it, and helps us get along, because we want to eliminate all the page 502 } photostats that we can. We want to eliminate everything that we can so as to get along. We have no desire to keep them from reading anything they want that is in the interrogatories or in the journals or in anything else, but we just want to keep the case to a minimum, if possible.

Mr. Fred G. Pollard: Your Honor, just to clear up an erroneous impression that I think Mr. Allen might have given, the reason that they have got all those newspapers and all these other documents in the interrogatories is because they didn't comply with the statute which requires them to file an affidavit describing the papers that they wanted. They have gotten all these papers, and the law is if they propound interrogatories to us, we cannot put them in evidence, but if they put them in evidence they have to read everything in them. They must take the good with the bad. I just wanted to clear up that situation.

Colonel Harris: They asked me a question which I want to answer when you get through.

Mr. Fred G. Pollard: I am through, sir.

The Court: All right, Colonel Harris.

Colonel Harris: In reply to the argument that this is a moot question that we are arguing, I submit that it is not correct. Counsel for the Plaintiff announced in open Court in

the presence and hearing of the jury that they were going to call Mr. Bryan back and stated the purpose for page 503 } which they would call him. If we had kept quiet and had made no objection, then when they did call him back they could come up and say, "You assented to it. The time for you to object was when we made our positive announcement, and on that announcement we didn't finish our examination." So we are compelled to put in these objections now. I don't think they are moot at all. They have announced what they are going to do.

In every lawsuit, if the Court pleases, there is by skilled trial lawyers a jockeying for position, and your Honor knows that in any kind of a contest position has just as much to do with final results as the skill of the players. It does two things: It enables them to use Mr. Bryan to open and Mr. Bryan to close, the witness also being a lawyer. Then it deprives Mr. Mullen and Mr. Pollard and myself of that information that he then gives when we cross-examine him, when we are making preparations as to what we will do with our witnesses. I submit if you were to concede that it is a matter of discretion of the court, it is a discretion that should be exercised in the customary way, and let them finish with the witness and then turn him over to the other side.

Mr. Robertson: Your Honor, I want to say just two things: I don't want to argue this today, but we are prepared to argue the matter right this minute. Mr. Moore has page 504 } the authorities and has the books with him if you want to argue it.

Mr. Mullen is wrong on his law on the interrogatories, what Mr. Mullen said last night. What the statute says is that all relevant and material parts must be read. That is the sense of it. I have not memorized the statute. I submit that that is the law and we are prepared to argue it, but I don't want to argue it now because I want to try to reduce it to a minimum. Frankly, what I think we are going to have to do is ask the Court to come here perhaps Saturday and go through those things one at a time and rule what is relevant and what is not relevant, and what is in and what is out. Then if they insist that all relevant parts be read, I think we have to read them. I don't think the law is that you have to read a lot of irrelevant trash.

Coming along now to our putting Mr. Bryan on later, that is within the sound discretion of the Court. If the Court defers its ruling now and we offer Mr. Bryan as a witness later on, and the Court thinks we do it under unfair circumstances or in a way that puts the Defendants at any unfair disadvantage, the Court at that time can exercise its discretion and

rule that he cannot go to the stand. I have never tried a case in Virginia yet where I have been denied the request for the exercise by the Court of the discretion that we are requesting now.

page 505 } Mr. Allen: I would like to make a brief reply to what Mr. Pollard said there about our proceeding in an improper way to get those interrogatories.

Mr. Fred G. Pollard: I didn't say it was improper.

Mr. Allen: You said we didn't comply with the statute. The Court held in the famous Robinson case, in 101 Va. 520, and I want to read it. It is very short. I will read one paragraph that may not have anything to do with it but it leads up to it:

"A litigant's attendance upon the trial may be compelled by the issuance and service upon him of a subpoena under code section 6-217 as amended by Act 1940, Chapter 159, as the case with any other witness; but a party to a civil suit as well as any other witness who is present in court may, of course, be called upon to testify although he may not have been served with a subpoena. The same principle applies to subpoenas issued under Code Section 6-219 and 6-237. While under these sections a witness or an adverse party may be compelled to appear and bring with him material documentary evidence, should the witness or party be present in Court and have in his custody the desired document, he may be lawfully compelled by the verbal direction of the court to produce it, although no subpoena has been issued therefor."

Then the court cites a number of authorities.

page 506 } We have the pre-trial conference rule by statute now, and at the pre-trial conference you can call for any document, and the court says whether they are presented. In these interrogatories, they were a combination of interrogatories, and then they said, "If you have these reports or if this man made these weekly reports, produce them. If this is the official journal of the United Mine Workers, produce it."

We came here and the transcript of the pre-trial conference will show that when we got to those things Mr. Mullen over there, I think it was Mr. Mullen, said "We haven't got all the copies of the journal that you want, but we will furnish the copies we have." They did furnish a batch of copies that thick (indicating). They are here, and all we have to do is ask that they be produced. The same way with the news, and the same way with those reports. In connection with interrogatories we called for all sorts of reports. They are here.

Supreme Court of Appeals of Virginia.

All we have to do is ask to be allowed to produce them. The fact that we didn't—

The Court: Can't I pass on that at the time?

Mr. Robertson: Yes.

Mr. Allen: Certainly.

Mr. Robertson: I don't see why we are arguing it now.

Mr. Fred G. Pollard: I want to straighten one page 507 } thing out. Mr. Robertson said I quoted the law incorrectly and it is he who quoted it incorrectly.

The Court: We will have to go into that more thoroughly.

Mr. Mullen: On the question of interrogatories, if you are going to try to argue that, I want to be heard fully on that. There isn't any question in the law about that. I didn't know we were here for that. We are here to see for how long we are going to adjourn.

The Court: I understand you want to adjourn until tomorrow morning.

Mr. Mullen: Yes.

Mr. Allen: May I make a suggestion here, then. I am just saying this out loud. If you are going to adjourn until tomorrow morning, we may be able and may be ready to go on with Mr. Bryan. Maybe Mr. Cassidy will have made his report by that time. Maybe we will have these other documents ready by that time. Then before we turn him over for cross examination you will have all this testimony.

The Court: If you can do that, do it. I will let the jury go until tomorrow morning at ten o'clock. In the meantime, if you have an opportunity, gentlemen, you might prepare me a memorandum on these interrogatories, the question having been raised that you have to read them all.

Mr. Mullen: Don't the Virginia cases settle it page 508 } absolutely?

Mr. Allen: I will save that for another time.

The Court: It would be helpful if you could let me have a memorandum on that tomorrow morning. I have your memorandum, Mr. Mullen.

Mr. Mullen: Yes.

Mr. Robertson: Have you given the Court a memorandum and not given us a copy of it? If you have, we would like that courtesy.

Mr. Fred G. Pollard: You cite one of the cases in your trial brief.

Mr. Robertson: I am saying if you have given papers to the Court I think I have a right to have a copy of it.

Mr. Mullen: Certainly I will give it to you.

The Court: The Court would like to have an opportunity to review the memorandum before passing on the question.

Mr. Allen: What time would you like to have it in the morning, Your Honor?

Mr. Robertson: Unless you are going to write it, let's leave it where it is.

Mr. Allen: The Judge said he wanted a memorandum.

Mr. Robertson: I just wanted you not to put a deadline on our work unless you are going to write it.

Mr. Allen: We have the authority.

page 509 } The Court: What time do you think the question will come up?

Mr. Robertson: I can't tell.

Mr. Allen: I don't think we will reach that—

Mr. Robertson: I want to confer with you before you commit us, George.

The Court: Let the Court go in and adjourn the jury until tomorrow morning and then we will come back in here.

(Brief recess.)

(Whereupon, at 12:45 o'clock p. m. the jury was excused until the following morning at 10:00 o'clock a. m.)

(The following proceedings were had in Chambers:)

The Court: Is there anything else that you gentlemen want to take up before we adjourn?

Mr. Robertson: No.

The Court: I thought maybe you gentlemen were conferring on something.

Mr. Robertson: No, sir.

The Court: We will meet tomorrow morning at ten o'clock.

(Whereupon, at 1:00 o'clock p. m. the Court recessed until 10:00 o'clock a. m. Friday, January 26, 1951.)

page 510 }

Hearing in the above-entitled matter was resumed, pursuant to recess, at 10:00 o'clock a. m., before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on January 26, 1951.

Alexander Hamilton Bryan.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Francis V. Lowden, Jr., Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Fred G. Pollard, Colonel Crampton Harris, Counsel for Defendants.

Also Present: Robert N. Pollard, Jr.

page 511 }

PROCEEDINGS.

(Roll call of the jury.)

Mr. Robertson: If Your Honor please, I would like to put Mr. Bryan back for just a very few questions.

Whereupon,

ALEXANDER HAMILTON BRYAN,
the witness on the stand at time of recess, resumed the stand and testified further as follows:

DIRECT EXAMINATION—continued.

By Mr. Robertson:

Q. Mr. Bryan, yesterday you testified regarding various proposals for construction work which you submitted to Island Creek and its associated and affiliated subsidiary companies for construction work which was not awarded to Laburnum. At my request have you made a tabulated statement summarizing those estimates?

A. Yes, sir.

(Defendants' counsel examining document.)

Colonel Harris: That is just summarizing the ones talked about yesterday?

Mr. Robertson: Yes.

Mr. Bryan, I hand you a statement and ask you if that is such a summary?

The Witness: Yes, it is.

Mr. Robertson: I offer the paper in evidence
page 512 } and ask that it be marked Plaintiff's Exhibit No.
54.

Alexander Hamilton Bryan.

(The document referred to was marked Plaintiff's Exhibit 54 and received in evidence.)

By Mr. Robertson:

Q. Mr. Bryan, you testified previously that your field clerk at the job site in Breathitt County, Kentucky, was Mr. Maynard Ragan; is that correct?

A. That is correct, he was the chief clerk.

(Document exhibited to Defendants' counsel.)

By Mr. Robertson:

Q. I hand you an unexecuted printed form entitled "Membership Application and check-off authorization, District 50, United Mine Workers of America," and attached to it is an envelope addressed to Laburnum Construction Corporation, 918 East Main Street, Richmond, Virginia, P. O. Box 234, attention Mr. A. Hamilton Bryan, with a cancelled postage stamp and stamped Salversville, Kentucky, July 16—it looks like 7 a. m., 1949, and ask you what that is?

A. After Mr. Hart telephoned me on July 14 I talked to the job superintendent Mr. Delinger, and also talked to Mr. Ragan, and asked that they keep in touch with the situation, and if United Construction Workers or District 50 were trying to organize any of our workers, please to let me know. On July 16 Mr. Ragan mailed to me this form of a membership application and check-off authorization, District 50, which one of our laborers had turned over to him.

Mr. Robertson: I offer the form and the attached envelope together in evidence and ask that they collectively be marked Plaintiff's Exhibit No. 55.

(The document referred to was marked Plaintiff's Exhibit 55 and received in evidence.)

By Mr. Robertson:

Q. Mr. Bryan, I hand you an unexecuted printed form for recognition of United Construction Workers, District 50, UMW, bargaining agent for employees in all matters pertaining to wages, hours of work, and other conditions of employment, and also agree to meet within blank days for the purpose of negotiating a contract, which you have turned over to me, and ask you where you got that, if you recall.

Alexander Hamilton Bryan.

A. This is one of the papers which Mr. David Hunter gave to me during my conference with him in Pikeville on August 5. Mr. Hunter was asking me to sign an agreement with the United Construction Workers. This is a printed form, rather, a mimeographed form under the letterhead of the United Construction Workers, Pikeville Regional Office, P. O. Box 50, Pikeville, Kentucky, which Mr. Hunter said contractors and other employers signed for the purpose of recognizing United Construction Workers and District 50 as the bargaining agent for employees pending the execution page 514 } of a more formal type of agreement after various terms and conditions had been agreed upon.

Mr. Robertson: I offer the sheet in evidence and ask that it be marked Plaintiff's Exhibit No. 56.

(The document referred to was marked Plaintiff's Exhibit 56 and received in evidence.)

Mr. Robertson: That is a short one and I would like to read it to the jury, if Your Honor please.

"A. D. Lewis, Director, O. B. Allen, Comptroller, United Construction Workers, affiliated with United Mine Workers of America, 900—15th Street, Northwest, Washington, 5 D. C. Address Reply to: Pikeville Regional Office, Post Office Box 50, Pikeville, Kentucky, Telephone 1031.

"We the undersigned do hereby agree to recognize the United Construction Workers, District 50, U. M. W. A., as bargaining agent for our employees in all matters pertaining to wages, hours of work, and other conditions of employment and also agree to meet within days for the purpose of negotiating a contract.

"U. C. W. Representative, Date, Company's Name, Address, signed By, Signature, Title, Approved by, David Hunter, Acting Director Region 58. This paper Union made by District 50, UMWA."

There is a union symbol on this which I can't read, it is so small.
page 515 } If Your Honer please, that is all the questions that I have to ask Mr. Bryan at this time. As I said yesterday, I wish to reserve the right to put him back on the stand later in further proof of our case-in-chief, if necessary to do so. I state at this time I have, of course, no

Harry Evans Cassidy.

intention of covering the same ground that he already has been over, and I would expect the Court at that time to rule whether the Court thought it fair for me to be permitted to put Mr. Bryan back or not. I realize I take that chance in what I am doing now and ask the Court to defer ruling on it until the question is actually presented.

The Court: The Court will reserve its ruling.

Mr. Robertson: I might say that Mr. Mullen has agreed with me that Mr. Bryan may now leave the stand before he is cross-examined in order that I may put Mr. Cassidy on to give evidence about these applications for membership that have already been mentioned in Mr. Bryan's testimony.

The Court: Very well. Stand aside, Mr. Bryan.

(Witness excused.)

Mr. Robertson: I call Mr. Harry C. Cassidy, please. I think Mr. Cassidy has not been sworn.

page 516 } Whereupon,

HARRY EVANS CASSIDY

called as a witness for Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Cassidy, your name is Harry C. Cassidy?

A. No, sir. Harry Evans Cassidy.

Q. Where do you live?

A. Lower Hanover County, about half way between Old Church and Cold Harbor.

Q. What is your present business or profession?

A. The examining of questioned documents.

Q. Will you state generally what experience you have had in that work in the last 25 years?

A. I began the study of them back in 1915 while I was Superintendent for the Identification Bureau in the Kentucky State Reformatory in Frankfort, Kentucky. I was an officer down there. I worked there in 1915 and I came to Richmond and went to work for the Chesapeake & Ohio Railway Company. I was with the C. & O. until 1948, and then I quit. I didn't retire. I quit and went into this business of document examination on my own hook. During that time I studied

Harry Evans Cassidy.

various questions that came up, read the books on the subject, did all the research work that I knew how to do and got in touch with people up in the cities that knew a page 517 } lot about it, and they tried to make something out of me. As they say, they did the best they could. Mr. Albert S. Osborn in New York, Mr. J. Fordyce Wood in Chicago, and Mr. Herbert Walter up at Winnipeg, Canada. I got in touch with quite a number of those important people and tried to do the best I could under the circumstances.

Q. How many years were you with the C. & O.?

A. Thirty-two years and 11 months and 15 days, I think.

Q. During that time did you have experience with the C. & O. in examining the authenticity of various questioned documents which came through the C. & O. offices in Richmond?

A. Most every type of an examination, except will cases, came up somewhere down through the C. & O. during that period, yes, sir.

Q. Are you the man who did that work for the C. & O.?

A. Yes, sir.

Q. Throughout the system?

A. Yes, sir.

Q. Have you had experience before today in testifying regarding questioned documents in lawsuits?

A. Yes, sir.

Q. Were you one of the handwriting experts in the Lindbergh kidnapping cases?

A. Yes, sir; one among nine.

Q. Could you mention some Virginia cases that page 518 } you have been in?

A. I have been in several will cases around over the State and in criminal prosecutions for extortion letters and different kinds of cases like that.

Q. At the request of Mr. Bryan, the President of Laborum Construction Corporation, have you made an examination of 16 application cards for A. F. of L. membership?

A. Yes, sir.

page 519 } (Defendants' counsel examining documents.)

By Mr. Robertson:

Q. Mr. Cassidy, I hand von 16 application forms, and I am going to call the names of them and get you to arrange them alphabetically as I do so, so that I may question you about them in that order.

Harry Evans Cassidy.

Mr. Fred G. Pollard: Your Honor, we object to the introduction of these in any form, on the ground that no proper foundation has been laid for their introduction. Some of them are filled in, some of them are not. We don't know under what conditions they were signed, whether the laborers were coerced into signing them, who filled them in, whether they were filled in before they were signed or after they were signed.

Mr. Robertson: We went over all that yesterday, Your Honor. That goes to the weight of it. I can only ask one question at a time. I am going to question him about the authenticity of the signatures.

The Court: The objection is overruled.

Mr. Fred G. Pollard: Exception.

By Mr. Robertson:

Q. Harry Barnett.

A. Jerry Barnett, you mean?

Q. Mr. Bryan says that they are numbered, so if you start with 2 and come right on down, you will have page 520 $\frac{1}{2}$ them in order.

(Discussion off the record.)

By Mr. Robertson:

Q. Mr. Cassidy, are those 16 application forms the forms which you examined, at the request of Mr. Bryan, to determine the genuineness of their signatures?

A. I spent the day yesterday.

Q. Will you describe precisely what examination you made to determine whether the signatures were genuine or false?

A. They supplied me what they said they could prove were known signatures, admitted signatures, genuine signatures, whatever you want to call them.

I went at it just like old Federal Judge Cochran did in *In re Barney*, Va. 2d. I laid the known writing on one side and the questioned writing on the other, in front of me, and then I examined it point by point, character by character, quality by quality, characteristic by characteristic. I did it in the best way that I knew how. The questioned signatures, of course, were compared with the known signatures.

Q. What was the character of the unquestioned signatures which you accepted as being correct?

A. They looked like they were on Government forms for deduction of their income tax and forms of the Labor-

Alexander Hamilton Bryan.

page 521 } num Construction Company. There were three of them, three forms that were filled out and signed.

(Documents exhibited to Defendants' counsel.)

Mr. Mullen: If Your Honor please, there has been no foundation made for comparison with these. There has been no foundation as to these.

Mr. Robertson: Are you objecting to them?

Mr. Mullen: I object to them at this time.

By Mr. Robertson:

Q. Mr. Cassidy, I will ask you to turn now to Application No. 1, which I believe purports to be signed by Lee Bach.

Based upon your examination and comparison, in your opinion is that signature the same as the signature upon the document with which you compare it?

The Witness: Your Honor, I can't answer that question until those documents are proved.

* * * * *

page 522 }

* * * * *

ALEXANDER HAMILTON BRYAN,

recalled as a witness on behalf of Plaintiff, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (resumed).

Mr. Robertson: Do you want to look at them before I give them to him?

(Documents examined by Mr. Fred G. Pollard.)

By Mr. Robertson:

Q. Mr. Bryan, I hand you batch of documents with various signatures, and ask you if you turned those over to Mr. Cassidy yesterday for him to use as the basis of his examination and comparison to determine the genuineness of the signa-

Alexander Hamilton Bryan.

tures of the applications that have been mentioned page 523 } and received in evidence here?

A. It is the standard practice of our Company to have all employees, when they are hired, sign the Employees Withholding Exemption Certificate, which shows how many exemptions he is claiming in connection with withholding taxes. The employee also signs what is known as an Employee's History Record, which states his name, Social Security Number, age, residence, his father is, whether he is married, and so forth, what his address is.

Also, in connection with work in Kentucky, it was also necessary to have every employee sign a paper electing to accept the provisions of the Kentucky Workmen's Compensation Act. We understood that unless he signed such a paper, the Workmen's Compensation Act didn't apply to him; so we had every man sign those three papers on this job.

When the question came up about the authenticity of the signatures on these application blanks, we went to our files and got the Employee's History Records, the Employees Withholding Exemption Certificates, and their statements accepting the provisions of the Kentucky Workmen's Compensation Act, for each one of these 16 people. They are the papers which I have in my hand, and they are the ones which I furnished to Mr. Cassidy to use in making his comparison of signatures.

Q. Were they kept in the regular course of the page 524 } business of the Laburnum Company?

A. They were kept in the regular course of business, not only on the work in Kentucky, but everywhere, the only exception to that being that the paper electing to accept the provisions of the Kentucky Workmen's Compensation Act was done on all employees in Kentucky, but only in Kentucky.

Q. Were those signed statements accepted by those who signed them as the basis upon which those particular phases of their connection with Laburnum were acted upon?

A. Yes, sir. There are witnesses to the signatures on most of the statements.

Mr. Robertson: Unless there is a request for it, I will not offer them in evidence. I think it just clutters up the record.

Mr. Mullen: We do not insist, Your Honor, on their being put in the record. We simply wanted the proper course to be followed.

Mr. Robertson: Will you stand aside, please, Mr. Bryan?

Harry Evans Cassidy.

(Witness Bryan temporarily excused.)

Mr. Robertson: Mr. Cassidy, will you come back, please?

page 525 } Whereupon,

HARRY EVANS CASSIDY

recalled as a witness on behalf of Plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (resumed).

By Mr. Robertson:

Q. Mr. Cassidy, I hand you a group of papers bearing various signatures, and ask you to look at them and see if those are the signatures which you used as the basis of your comparison of the application cards you mentioned, to determine the genuineness of the signatures on the application cards?

A. These were the known signatures that were furnished me to use as the standard of comparison with the questioned signatures, yes, sir.

Q. You have already stated the kind of examination you made. I don't think it is necessary to repeat that.

I will ask you to turn to Application No. 1, Lee Bach. The questions I ask you now are based on your examination.

In your opinion, is the signature of Lee Bach on the application blank the same as the unquestioned signature with which you compared it?

A. Yes.

Q. If you will lay that aside and go to No. 2, page 526 } What is the date of No. 1, first?

A. 4/18/49. All three of the documents bear the same date.

Mr. Robertson: I am asking you to look at No. 1, the application blank. You haven't got them. You are looking at the wrong thing.

(Discussion off the record.)

By Mr. Robertson:

Q. I hand you No. 1, Lee Bach, and ask you what is the date of that one?

Harry Evans Cassidy.

A. It is dated at the bottom, in pencil, 7/21/49. That is July 21, 1949.

Q. I hand you now No. 2, Jerry Barnett, and ask you whether, based upon your examination, that signature is the same as the unquestioned signature with which you compared it?

A. Yes, it was, but this document is not dated.

Q. I hand you now No. 3, Dan Combs, and ask you whether that signature, in your opinion, is the same as the unquestioned signature with which you compared it?

A. Yes, sir, absolutely, sir.

Q. What is the date of that one?

A. That is dated 7/21/49.

Q. I hand you now No. 4, which bears the signature of Green Conley, and ask you whether or not, in your opinion, that signature is the same as the unquestioned signature 527 } ture with which you compared it?

A. There isn't any unquestioned signature here. On the Employees Withholding Exemption Certificate here, the known one, the Laburnum documents here, the two forms they filled out, this Green Conley signed by mark; and on this, there is very good handwriting here that doesn't even resemble this Green Conley over here.

Q. What is your explanation of that, if any?

A. I would judge that this is—thus, by inference, that they forgot to have the person who signed this make his mark, that somebody signed it for Green and just neglected to have him put his "X" mark on it. That is all I know.

Colonel Harris: We move to exclude that pure guesswork on the part of Mr. Cassidy.

The Witness: It is nothing else but a guess.

The Court: I will sustain the motion.

It is a guess. Gentlemen, disregard the evidence regarding the "X" mark.

By Mr. Robertson:

Q. Is the written part of those applications, the handwriting part of those applications above the various signatures, in your opinion, all in the same handwriting?

A. As far as I can tell, they were, yes, sir.

Q. Can you tell whether or not the signature on the Green Conley application is the same writing as the page 528 } handwriting in the body of the application?

A. It doesn't have any resemblance, and I don't

Harry Erans Cassidy.

think the person who filled this out could hardly write two signatures like that "Green Conley" in the way it has been here on this questioned document.

Q. You have no explanation, based on your examination?

A. I couldn't do nothing but guess, and there is no use in guessing about something.

Q. I ask you to turn to No. 5, which—first, what is the date of No. 4?

A. 7/21—No. 4? They are all dated July 21, 1949, when they are dated.

Q. Now, No. 5 bears the signature of Earnest Howard. In your opinion, is that signature the same as the unquestioned signature with which you compared it?

A. Yes, sir, even though some of them are spelled E-a-r-n-e-s-t and some E-r-n-e-s-t. On the questioned document, they are spelled E-a-r-n-e-s-t; and on the Laburnum Company records, it is spelled once as E-a-r-n-e-s-t Howard and twice as E-r-n-e-s-t. There has been, it looks like an addition of this "a" in the Employees Withholding Exemption Certificate of this standard which has been furnished me. It looks like the person might have started to write his name E-r-n-e-s-t and then changed it to E-a-r-n-e-s-t, which, of course, is the wrong spelling. E-r-n-e-s-t is the page 529 } way to spell the person's name, if I am right in my spelling.

Q. I hand you now No. 6, which bears the signature Hargus Howard, and ask you if that signature is the same as the unquestioned signature with which you compared it?

A. Yes, sir, in my best judgment they are the same, but the "Hargus" is spelled wrong. H-a-r-g-i-s is the way to spell Hargis. This is H-a-r-g-u-s.

Q. You are not an authority on the spelling of proper names?

A. I know those families down through there, and I know the way they spell their names.

Q. Did you come from out there?

A. Yes, I come from Kentucky. I came from Clementsville, Kentucky, and I know lots of people from Breathitt, Wolfe, Magoffin, Floyd and Pike, and they are all good friends of mine, too, most of them.

Q. Why don't you go back?

A. I am doing all right, outside of court days. (Laughter.)

Q. I hand you now No. 7, which bears the signature of John Jordan, and ask you if, in your opinion, that signature is the

Harry Evans Cassidy.

same as the signature of the unquestioned document with which you have compared it?

A. I don't have any doubt about it whatsoever, but what that is a genuine signature.

page 530 } Q. I hand you now No. 8, which bears the signature of Burl King, and ask you if, in your opinion, that signature is the same as the unquestioned signature with which you compared it?

A. The person who wrote these signatures, the questioned signatures, didn't get on the line, the horizontal line of writing, as well as they did over on these, but they still have the same form, shape, size, proportion, pen lifts, beginning strokes and ending strokes, all the way through. I have to pronounce them genuine when they are that good.

Q. I hand you next No. 9, which bears the signature Ossie Lovely, and ask you whether or not, in your opinion, that signature is the same as the unquestioned signature with which you compared it?

A. Every element, feature, quality, and characteristic of one shows in each. These all conform to each other, and these two conform with each other. All five conform together, so I think they are good.

Q. I hand you now No. 10, which bears the signature of Luther Litteral, and ask if, in your opinion, that signature is the same as the signature of the unquestioned document with which you compared it?

A. Yes, sir, I think unquestionably they are all written by the same person.

page 531 } Q. I hand you now No. 11, which bears the signature of George Miller, and ask you whether, in your opinion, that signature is the same as the signature of the unquestioned document with which you compared it?

A. I don't think two people could write two sets of signatures that bad and exactly alike and not be the same person. (Laughter).

Q. Is that George Miller application dated?

A. No, sir. It is one of the undated ones, and very slightly filled in. It hasn't anything but his name and the name Decoy, Kentucky, on it.

Q. I hand you now No. 12, which bears the signature Matt Miller, and ask you whether or not, in your opinion, that signature is the same as the signature on the unquestioned document with which you compared it?

A. There is only one questioned signature involved here.

Harry Evans Cassidy.

Matt didn't sign it where he was supposed to sign it here, but he did put it in at the top. I think that top signature and the bottom signature are the same as the three on these Laburnum Company records.

Q. Is that application of Mat Miller dated or undated?

A. No, sir, it is not dated.

page 532 } Q. I hand you now No. 13, which bears the signature Avis Salyers and ask in your opinion if that signature is the same as the unquestioned signature with which you compared it.

A. These two questioned signatures were so much alike and the same length and height and so forth that I am a little skeptical of them. They look like they might have been copied from the same model. So I made a tracing of this signature and this signature as a test and held it up between me and the light and they didn't coincide. So they are the signatures of the same person at the same time and it is a genuine writing. I think the writing of this signature agrees with the known signatures over there.

Q. What is the date of Avis Salyers' application?

A. That is 7-21, July 21, 1949.

Q. I hand you now the application signed Green Stacy and ask you whether in your opinion that signature is the same as the signature of the unquestioned document with which you compared it.

A. I do. Green Stacy writes a very rapid signature that would be very difficult to forge. Some of these poorly written signatures are susceptible to tracing and forgery, but one that is rapidly written by Green Stacy, like John Hancock's signature on the Declaration of Independence, is mighty hard to imitate. It is hard to imitate good writing page 533 } like that.

As a handwriting expert is the fact that John Hancock's signature is hard to forge the origin of the expression "Put your John Hancock on it"?

A. Yes, sir; I think that is where it originated.

Peter Fannhill is another writer up in Boston that was another hard one for anybody to imitate.

Q. Green Stacy's application is signed what?

A. Green Stacy, S-t-a-c-y.

Q. What is the date?

A. July 21, 1949.

Q. I hand you now application which bears the signature Donald B. Trimble and ask you whether or not that signa-

Harry Evans Cassidy.

ture in your opinion is the same as the signature on the unquestioned document with which you compared it.

A. I think it is the same and that is another very difficult signature for a person to counterfeit or simulate. Mr. Trimble writes a very good hand. If he didn't have a man's name I would think it might be a woman's writing.

Q. What is the date of that application?

A. 7-21-1949.

Q. I hand you now application which bears the signature Green Trusty, and ask you whether or not in your opinion that signature is the same as the signature of the unquestioned document with which you compared it.

page 534 } A. Unquestionably, not a doubt in the world in my mind about them.

Q. And is Green Trusty's application dated or undated?

A. It is undated. That is a family name I never heard of down there.

Mr. Robertson: You may cross-examine the witness.

The Witness: I forgot to mention that that form there was filled in by Trimble, too. That is the only one that is not in the same handwriting that apparently filled in the rest of those forms.

CROSS EXAMINATION.

By Mr. Mullen:

Q. You have no information whatever in regard to these except what you have testified to for the purpose of determining the authenticity of the signatures. That is correct, is it not?

A. I haven't any information—

Q. You have no information in regard to these, how or when they were taken or anything, except what you have testified?

A. Except what it shows on the face of it. I am accepting that.

Q. You do not know whether those papers have ever been questioned, the signatures on those, or not, do you?

A. No, I do not. I am acting on faith as far as page 535 } the known documents are concerned and using my best judgment on the questioned ones.

Q I hand you No. 1, Lee Bach. Is the body of that filled out?

Harry Evans Cassidy.

A. Yes, sir.

Q. Is the handwriting in the body filling it out the handwriting of the person who signed it?

A. Oh, I don't think so, sir.

Q. What date does that bear?

A. 7-21, July 21.

Q. Is that in the handwriting of the man who signed it?

A. No, sir; I don't think so. In my opinion—

Mr. Robertson: Wait a minute. Let him finish, please, before you interrupt him.

The Witness: In my opinion the filling in of the body of it, everything except the signature, was by somebody else than the signer.

By Mr. Mullen:

Q. That is an application for membership in what?

A. The United Brotherhood of Carpenters and Joiners of America, and then it says at the bottom the Louisville District Council of Woodworkers Affiliated with the American Federation of Labor.

Q. You don't see the word Paintsville or Salyersville on there anywhere, do you?

A. Not on this one, no, sir.

page 536 } Q. I hand you No. 2, Jerry Arnett. Is the body of that filled out?

A. Only with the name Jerry Arnett, Noctor, Kentucky.

Q. Is that the same handwriting as the signature?

A. No, not as the signature.

Q. What is the date of that?

A. No date.

Q. To whom is that addressed, that application?

A. To the United Brotherhood of Carpenters and Joiners of America.

Q. And down at the bottom the Louisville District Council.

A. The Louisville District Council of Workers affiliated with the American Federation of Labor.

Q. There is nothing about Salyersville or Paintsville on that, is there?

A. No, sir.

Q. I hand you No. 3, Dan Combs. Is that filled out in the body of it?

A. Yes, sir.

Q. Is the handwriting in which it is filled out the same as the handwriting of the person who signed it?

Harry Evans Cassidy.

A. No, sir.

Q. What date does it bear?

page 537 } A. 7-21-49.

Q. To whom is that addressed?

A. It is addressed to the United Brotherhood of Carpenters and Joiners of America, Louisville District Council of Woodworkers affiliated with the American Federation of Labor.

Q. There is written in there at the top the word Salyersville, isn't there?

A. Yes, sir.

Q. And Local—?

A. 697.

Q. That is different from those that you have already passed on?

A. It is in addition to what the others were, yes, sir.

(Defendants' counsel conferring)

By Mr. Mullen:

Q. Is that dated?

A. Yes, sir; this is dated July 21, 1949.

Mr. Robertson: Let him complete his answer before you ask him another question. You are inadvertently cutting in on the witness before he finishes.

Mr. Mullen: I thought he had finished.

The Witness: I thought I had, too.

Mr. Robertson: I am wrong, then.

The Court: Mr. Robertson, you are in error (laughter).

page 538 } By Mr. Mullen:

Q. I hand you No. 4. Is that filled in?

A. Yes, sir.

Q. Is the writing filling it in the same as the writing of the person who signed it?

A. No, sir; not in my opinion it is not.

Q. What is the date of it?

A. July 21, 1949.

Q. Is that the handwriting of the signer?

A. No, sir; only the signatures.

Q. That is addressed to—

A. United Brotherhood of Carpenters and Joiners, Louisville District Council of Woodworkers affiliated with the American Federation of Labor.

Harry Evans Cassidy.

Q. Does that have the words Salyersville, Kentucky, up above that?

A. Yes, sir, up at the right-hand corner.

Q. And on the left-hand corner?

A. Local 697.

Q. I hand you No. 5. That is Earnest Howard. Is the body of that filled in?

A. Yes, sir.

Q. Is the handwriting in which it is filled in the same as that of the signer?

A. No, sir; not in my opinion, sir.

Q. Is it dated?

page 539 } A. Yes, sir; 7-21-49.

Q. Is the date in handwriting of the signer?

A. No, sir.

Q. To whom is that addressed?

A. United Brotherhood of Carpenters and Joiners, Louisville, District Council of Woodworkers affiliated with the American Federation of Labor.

Q. Does that have anything else up in the right-hand corner?

A. It has the notation, Salyersville, Kentucky on the right-hand side and Local 697 on the left.

* * * * *

Q. I hand you No. 6, Hargus Howard. Is that filled in?

A. Yes, sir.

Q. Is that handwriting the same as that of Hargus Howard?

A. No, sir.

page 540 } Q. Has it a date?

A. Yes, sir.

Q. Is the date in the same handwriting as Hargus Howard's?

A. No, sir.

Q. To whom is that addressed?

A. That is addressed to the United Brotherhood of Carpenters and Joiners of America, Louisville District Council of Woodworkers affiliated with the American Federation of Labor.

Q. Does that have any addition at the top above the application?

A. It has Salyersville, Kentucky up at the right-hand side and Local 697 over on the left-hand side.

Harry Evans Cassidy.

Q. I hand you No. 7, John Jordan. Is the body of that filled in?

A. Yes, sir.

Q. I notice there is an "x".

A. In front of the signature.

Q. In front of the signatures. Do you take that merely as a check?

A. No, sir. I think that was put there to show the man where to sign. It is frequently done.

Q. That is the question I asked you. You re-
page 541 } gard it as a check and not as a signature?

A. Not as a mark.

Q. Is the body of that filled out?

A. Yes, sir.

Q. Is that in the same writing as Jordan's?

A. No, sir.

Q. And the date on it?

A. 7-21-49.

Q. That is addressed to whom?

A. United Brotherhood of Carpenters and Joiners, Louis-
ville District Council of Woodworkers affiliated with the
American Federation of Labor.

Q. Is there any addition at the top?

A. It has Salyersville, Kentucky on the right-hand side and
Local 697 over on the left-hand side.

Q. I hand you No. 8, Burl King. Is that filled in?

A. Yes, sir.

Q. Is the handwriting in which it is filled in the same as
that of the signature?

A. No, sir.

Q. Is it dated?

A. Yes, sir; 7-21-1949.

Q. To whom is it addressed?

A. United Brotherhood of Carpenters and Joiners, Louis-
ville Council of Woodworkers affiliated with the
page 542 } American Federation of Labor.

Q. That has an addition?

A. Salyersville, Kentucky up at the right-hand side, Local
697 over to the left.

Q. I hand you No. 9, Ossie Lovely. Is that filled in?

A. Yes, sir.

Q. Is the body of the form filled in in the handwriting of
the signer?

A. No, sir; not in my opinion.

Q. Is it dated?

Harry Evans Cassidy.

A. Yes, sir, 7-21-1949.

Q. Is that in the same handwriting as the signature?

A. No, sir.

Q. To whom is that addressed?

A. To the United Brotherhood of Carpenters and Joiners, Louisville District Council of Woodworkers affiliated with the American Federation of Labor.

Q. Is there any pencil addition?

A. Salyersville, Kentucky over on the right-hand side, Local 697 over to the left.

Q. I hand you No. 10, Luther Literal. Is the body of that filled in?

A. Yes, sir.

Q. Is the handwriting the handwriting of the person who signed it?

page 543 } A. No, sir.

Q. Is it dated?

A. Yes, sir; 7-21-49.

Q. Is the writing the same as that in the body?

A. Not in my opinion. Salyersville is up on the right-hand corner and Local 697 over on the left.

Q. I hand you No. 11. Is it supposed to be George Miller?

A. Yes, sir.

Q. Is that the one that you questioned?

A. No, sir.

Q. That is the one that is so bad no two people could make it the same.

A. I don't think any two people could write that bad.

Q. Is the body of that filled in?

A. Only in part. It just has the name George Miller, Decoy, Kentucky.

Q. To whom is it addressed?

A. Addressed to United Brotherhood of Carpenters and Joiners, Louisville District Council of Woodworkers affiliated with the American Federation of Labor.

Q. Does that have Salyersville on it?

A. No, no notation of Salyersville.

Q. No local number on it?

page 544 } A. No, sir; nor date of birth and none of the other questions asked.

Q. Is it dated?

A. No, sir.

Q. I hand you what purports to be the application of Matt Miller. Is the application itself filled out at all?

A. It only has the name Matt Miller, Decoy, Kentucky.

Harry Evans Cassidy.

Q. And the application is not signed, is it?

A. It is signed below and filled in at the top with Mat Miller.

Q. But the actual application there--

A. Oh, no, the application doesn't have anything but Matt Miller, Decoy, Kentucky.

Q. Up at the top, and not signed?

A. Up at the top. That is not signed. It is just signed at the bottom.

Q. Signed in that headed "authorization for representation under the National Labor Relations Act"?

A. That is right.

Q. But the application to join the union is not signed at all?

A. No, sir; it is not.

Q. Is there any date on it?

A. No, sir.

Q. Is there anything about Salyersville or local?

A. Neither one; no, sir.

page 545 } Q. I hand you No. 13, Avis Salyers. Is that filled in?

A. Yes, sir; it is filled in.

Q. Is the handwriting in which it is filled in the same as the handwriting of the signer?

A. No, sir.

Q. Has it any date?

A. Yes, sir; it is dated July 21, 1949.

Q. Is that the same handwriting as the signer?

A. No, sir.

Q. To whom is that addressed?

A. To the United Brotherhood of Carpenters and Joiners, Louisville District Council of Woodworkers affiliated with the American Federation of Labor.

Q. Is there anything about Salyersville?

A. It has in pencil Salyersville, Kentucky up on the right-hand side of the application, and Local 697 over on the left-hand side of the application.

Q. I hand you No. 14, Green Stacy. Is the body of the application filled in?

A. Yes, sir.

Q. Is that in the handwriting of the signer?

A. No, sir; not as good handwriting as the signer.

Q. Is it dated?

A. Yes, sir; 7-21-1949.

page 546 } Q. Is that in the handwriting of the signer?

Harry Evans Cassidy.

A. No, sir; I don't think so.

Q. Does that have anything about Salyersville?

A. No, sir; it doesn't, or No. 697 either, and it is addressed to the United Brotherhood of Carpenters and Joiners, Louisville District Council of Woodworkers affiliated with the American Federation of Labor.

Q. I hand you No. 15, which is the application of Donald B. Trimble. Is the body of that filled in?

A. Yes, sir.

Q. Is that the same handwriting as the signature?

A. Yes, sir; in my opinion Donald B. Trimble filled in that, all except the Local 697 and Salyersville.

Q. That was not filled in in his handwriting?

A. That is not in his handwriting.

Q. That was addressed to—

A. The United Brotherhood of Carpenters and Joiners, Louisville District Council of Woodworkers affiliated with the American Federation of Labor.

Q. But it has above in the right-hand corner the addition of Salyersville?

A. Yes, and in the left-hand corner 697, but not in his handwriting.

Q. Did I ask you if that was dated?

A. No, you didn't; but it is dated 7-21-1949.

page 547 } Q. Is that in—

A. I think Donald put the figures on there, too, he dated it.

Q. I hand you No. 16, Green Trusty. Is that filled in?

A. Only in part. It just has the name Green Trusty, Decoy, Kentucky. It is signed and it has an "x" mark in front of it.

Q. Is the name in the body of it and the location in the handwriting of the signer?

A. No. Green couldn't write that good.

Q. Is it dated?

A. No, sir.

Q. To whom is it addressed?

A. It is addressed to the United Brotherhood of Carpenters and Joiners, Louisville District Council of Woodworkers affiliated with the American Federation of Labor.

Q. These applications are in the form of a letter, with postage paid, so they could be mailed, are they not?

A. Yes, sir.

Q. To whom are they addressed?

A. To the Louisville District Council of Woodworkers,

Harry Evans Cassidy.

Room 204 Torbitt Building, 406 South Fifth Street, Louisville, Kentucky. It is what is known as a business reply envelope.

Q. I know that all of them show at the top that they have been sealed and torn open. Were they sealed page 548 } when they were given to you?

A. No, sir.

Q. So you know nothing about that.

A. No, sir; I do not.

Q. Did you compare the handwriting in the body of those instruments with each other, that is, handwriting with handwriting in the body?

A. Yes, sir.

Q. Are the larger number of them in the same handwriting?

A. I would say all of them were except Burt Trimble's.

Q. All except Burt Trimble's are in the same handwriting.

A. Yes, sir.

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page 549 } (The following proceedings were had in chambers.)

Mr. Mullen: Judge, we have Mr. Holt, a member of the firm of Elkins, Durham & Kemp, accountants, and we would like now to put the books at his disposal and to know how it can be done.

Mr. Robertson: You want to do what?

Mr. Mullen: We want to make arrangements for carrying out the authorization given us yesterday to examine the books.

Mr. Robertson: I think he can go down there and have our representative there, have Mr. Bryan's representative there. What firm is Mr. Holt from?

Mr. Mullen: Elkins, Durham & Kemp.

Mr. Robertson: Where is that?

Mr. Mullen: 1201 State Planters Building.

Mr. Robertson: I don't see any reason why he shouldn't.

Mr. Mullen: Get Mr. Bryan to come in.

Mr. Robertson: I thought you wanted Mr. Bryan to come out whenever you mentioned his name.

Mr. Mullen: Not on that particular question.

Mr. Allen: I think it is all understood.

Mr. Mullen: We want to do it in time.

The Court: He wants to get to work on it.

Mr. Robertson: I also understand Mr. Bryan page 550 } wants his accountant there, and wants Mr. Leach there, since they can help.

Harry Evans Cassidy.

Mr. Fred G. Pollard: Provided that it won't delay things to have him there.

Mr. Robertson: It doesn't make any difference whether it delays it or not.

The Court: Would it be helpful to you, Mr. Holt, to have these gentlemen, who are familiar with it?

Mr. Holt: It probably would be.

The Court: I think it would be.

Mr. Fred G. Pollard: We understand he is entitled to see everything except the income tax returns.

Mr. Robertson: The Judge can't make any such—I didn't mean any reflection on Mr. Holt at all. The Court is not going to make any such blanket ruling as that. Mr. Pollard certainly doesn't know any more about accounting than I do. They have reputable accountants to go down there and see whatever is necessary for them to come up with what they think is the necessary information that the Court directs them to give. They are reputable certified public accountants, and our people are going to cooperate with them to that end.

Mr. Mullen: Mr. Bryan.

(Mr. Bryan entered the room.)

Mr. Mullen: Mr. Bryan, we just want to make page 551 } arrangements for Mr. Holt, who is a member of
the accounting firm of Elkins, Durham & Kemp,
to start work without delay. He is here. Can you give instructions for him to go to work now?

Mr. Robertson: I told them that you wanted your company accountant and also Mr. Leach to be there to cooperate and collaborate with Mr. Holt and help in any proper way they can.

Mr. Bryan: That is a right big order. It goes back to the beginning of 1941. I have already instructed our people to start assembling the records, and we had planned to have them available beginning tomorrow morning. We are having photostatic copies made of portions of the auditor's reports which give detailed information on every job that we have done from 1941 through the end of 1950, showing sales, the direct cost of sales, and the job profit or loss. That is going to be the simplest way to handle it.

If this gentleman over here, or any other accountant, in my opinion, undertakes to verify everything shown on these reports over a ten-year period, the trial won't finish for two or three months.

Harry Evans Cassidy.

We will also ask our accounting firm, Leach, Calkins & Scott, to collaborate with the firm of Elkins, Durham & Kerap, to assist them. Perhaps the data can be supported by notes that Leach, Calkins & Scott have made during page 552 ¹ their periodic audits.

I understand from our auditors and accountants that it would be an exceedingly difficult job, if not almost impossible, within the period of time allotted, for Elkins and Durham, or any other accounting firm, to go back and segregate out of the various accounts the data that is already compiled on the audit reports of Leach, Calkins & Scott.

The Court: Mr. Holt has indicated to the Court that he thought their assistance would be helpful.

Mr. Bryan: I was not able to get in touch with Mr. Leach yesterday, and of course, I have been here all this morning. We started the ball rolling.

The Court: And you will be ready by tomorrow morning?

Mr. Bryan: We plan to be ready by tomorrow morning. That was our schedule.

Mr. Fred G. Pollard: Judge, I don't think that we want to go in and verify things that already have been done by Leach, Calkins & Scott, but we want their results. I understood yesterday we were entitled to the audit reports, and Mr. Bryan says he is having portions or parts of the audit reports photostated.

page 553 ¹ Mr. Robertson: Let me say something here, Judge. It seems to me that we just talk, talk, talk, and are not getting anywhere. The Court has indicated what we want. We have thoroughly responsible accountants. In good faith we are going to cooperate with them. If Mr. Holt thinks he is not getting cooperation—

The Court: You will report to your attorneys and let the attorneys report to me if you are not getting what you want.

Mr. Pollard: There is one thing we know we want. You have said we are not entitled to the income tax returns. We would want this figure, and it is not giving us the return. We would like to know the figure that Laburnum Construction Corporation reported to the State of Kentucky and the State of West Virginia for 1948 and 1949 as its figure for net income taxes on which the tax was based.

Mr. Robertson: Your Honor, we think they have no right to it.

Mr. Fred G. Pollard: That is not seeing the returns. They claim so much profit out there. We just want to know what they reported to those states as taxable income.

Harry Evans Cassidy.

The Court: It wouldn't take long to furnish that information. Let the Court take that point under advisement, and when you are through with the audit by Mr. Holt, take that matter up with me again. It wouldn't take long page 554 } to get those figures, I imagine. It wouldn't take more than 10 or 15 minutes. The Court will take that request under advisement.

Mr. Robertson: That is all right.

The Court: As I say, it would take but a few minutes to get that.

Mr. Fred G. Pollard: I don't think the other information we want will take terribly long.

The Court: I do believe that all these gentlemen, the CP's and professional men are of good standing, and I think probably collaboration would be helpful and would save a lot of time.

Mr. Robertson: I think they know a lot better what to do than we can tell them.

The Court: Better than the Court and I guess counsel.

Mr. Allen: While we are in here, Your Honor, I think yesterday we promised Your Honor we would let you have a memorandum in connection with these interrogatories.

The Court: Yes.

Mr. Allen: I have about completed that memorandum but I had to come back in Court this morning before they were quite finished. If I get that completed and get it to Your Honor this evening after adjournment and a copy to counsel, will that be all right?

The Court: Yes.

Mr. Allen: It may be some seven or eight page 555 } o'clock before I get it to you but I think I will be able to get it to you before that time.

The Court: Very well.

Mr. Allen: I will have to send it to you by special messenger to your home.

The Court: It may be that I will be coming in town for a few minutes tomorrow. Call me at home tonight if you don't mind. It might save a trip. I may have to come in town for a few moments and I could pick it up then.

Mr. Mullen: You are going to give us a copy of that?

Mr. Robertson: Yes.

The Court: Of course you will furnish Mr. Mullen a copy.

Mr. Allen: Yes. I stated that.

Mr. Mullen: What you furnished was a very sketchy one.

of course, and we didn't think there was any question about it.

Mr. Allen: Where would you want me to deliver the copy and to whom?

Mr. Mullen: What time?

(Off the record.)

Mr. Mullen: Mr. Holt, I don't think we need to keep you any longer. You know where the Laburnum Corporation is. You can go there tomorrow morning and get in touch with them.

page 556 ½ Mr. Robertson: I think they open there at eight o'clock.

The Court: We are about to start the cross examination of Mr. Bryan, are we not?

(Mr. Holt left the room.)

The Court: Gentlemen, you will recall that on January 22 counsel for the defendants moved the Court to permit Mr. Fred Pollard to examine and cross-examine witnesses on behalf of District 50, and either Mr. James Mullen or Colonel Crampton Harris to examine and cross-examine witnesses on behalf of the United Construction Workers, and the United Mine Workers of America, which motion was objected to by counsel for the Plaintiff. Do you gentlemen still object to that motion?

Mr. Robertson: Yes.

Mr. Allen: I object to that, Your Honor. Where they are closely connected like this, it is not permitted.

The Court: Do I understand you still object?

Mr. Allen: Yes.

The Court: Gentlemen, I have given careful consideration to this motion, and the record discloses that all three of these gentlemen have appeared for and represent all three of the defendants in this case. It appears to the Court that the practice in the courts of this Commonwealth under similar circumstances is to permit only one attorney for the page 557 ½ defendants to examine a witness of the defendants and to permit only one attorney for the defendants to cross-examine a witness of the Plaintiff, and not have the privilege of cross-examining the witnesses of the defendants. Therefore, the motion is overruled.

Mr. Fred G. Pollard: We note an exception.

The Court: All right.

Mr. Mullen: Your Honor, there is one other matter we would like to take up.

Mr. Robertson asked Your Honor to postpone a ruling to the question of interrupting Mr. Bryan's testimony at this time and putting him back for some of their major testimony-in-chief. I know it is in the discretion of the Court, and I know it is permitted where some question has been overlooked or something of that kind, but having him break into what he admits is his main evidence, his evidence-in-chief, and a considerable amount of it, and then call on us to cross-examine on a part of the evidence-in-chief and later put on a whole lot more evidence I think is a disadvantage to the defendants under which we ought not to labor.

The Court: Mr. Mullen, the Court prefers to defer ruling on that question until Mr. Bryan is offered again as a witness in this case.

Mr. Mullen: The reason I was asking Your Honor—

The Court: But I will say this. If the Court page 558 } decides to let him take the stand again, counsel for the defendants will have every opportunity to cross-examine him.

Mr. Mullen: I knew we would have that, but the damage has been done then.

Mr. Fred G. Pollard: Your Honor, of course we don't know what their plan of presenting their case is, but we can speculate, and we think that what the plaintiff is doing is that if at the end of the trial they feel that they haven't proved agency in some other way, then they are going to put Mr. Bryan back on with the interrogatories.

The Court: As I understand, they want to put Mr. Bryan back on or may want to put him back on before they close their case.

Mr. Robertson: That is right.

Mr. Mullen: Before they close their case, yes.

The Court: Before you put on any evidence at all.

Mr. Fred G. Pollard: But they are going to wait to see whether they can get certain evidence in before, and if they are denied the right to put that evidence in, then they will come back with Mr. Bryan.

Mr. Robertson: Judge, this is the answer to the thing. Mr. Pollard admits that he is conjecturing. He doesn't know what we are going to do at all. If we are taking the risk in what we are doing, if we want to put Mr. Bryan back before we close our case-in-chief and the Court thinks page 559 } that the circumstances under which we are doing it are unfair and unjust to the defendant, of course the Court will rule we can't do it.

The Court: I think the Court will be in a better position

Alexander Hamilton Bryan.

to rule on that question at the time you offer Mr. Bryan.

Mr. Robertson: We might not offer him.

The Court: If you do offer him. That is the position the Court takes, gentlemen.

page 560 } (The following proceedings were had in open court:)

The Court: All right, Mr. Bryan, will you take the stand.

Whereupon,

ALEXANDER HAMILTON BRYAN

recalled as a witness on behalf of Plaintiff, having been previously duly sworn, was examined and testified as follows:

Mr. Mullen: If Your Honor please, the defendant without waiving any of the objections heretofore made will proceed to cross examination.

The Court: Very well.

CROSS EXAMINATION.

By Mr. Mullen:

Q. Mr. Bryan, you stated near the end of your testimony that a prominent businessman—was it of Paintsville or Salyersville—came to your superintendent and brought a message that if he wanted to go out of Kentucky under his own steam, he had better go? Who was that businessman?

A. Mr. Adams.

Q. What is his first name?

A. I don't know.

Q. Where did he live?

A. Salyersville, I was told.

Q. Salyersville. He came as a messenger from someone else?

A. That is what Mr. Delinger was told.

page 561 } Q. Did Mr. Delinger state whether he told him from whom he was bringing the message?

A. Yes.

Q. Who was that?

A. Mr. Delinger told me United Construction Workers, District 50.

Q. Who?

A. United Construction Workers and District 50.

Alexander Hamilton Bryan.

Q. I asked you from what individual he brought the message.

Q. No, He didn't tell me that. Mr. Delinger will be here to testify and you can find out from him.

Q. Mr. Bryan, you have put in evidence the contract of October 28, 1948, which provided for necessary construction work at installations, the preparation of a coal tippie, a coal preparation plant, for the Pond Creek Pocahontas Company in Breathitt County, Kentucky. The contract described the work to be done, the basis of the payment to you and other conditions. You testified you went over this proposed work and were advised that other work was to be done there, and you claim that you were assured that you would get the other work which you subsequently in your testimony have itemized. Were you given any contract for other work at the time you entered into the contract of October 28, 1948?

A. Mr. Salvati, who was then the Vice President in Charge of Operations of Pond Creek Pocahontas Company, and also of Island Creek Coal Company, agreed—I might say first he told me about the additional work and said what it was, said that it had been approved by the Board of Directors, that he wanted us to do it, and it was agreed that we would do it on the basis of cost plus 5 per cent. The work amounted to over \$600,000.

Q. Did you enter into any written agreement with him for extra work at that time?

A. No, there was no written agreement.

Q. Was any assurance given you that the additional work which you have outlined, which you claim was promised you, would be done regardless of conditions or developments?

A. Mr. Salvati said that the most important thing to do was to get the coal preparation plant in operation as promptly as possible, that the C&O was spending several million dollars bringing in railroad tracks and making the tunnel through the mountain for the tracks, and that it was estimated that they would be ready some time in May 1949, and that this work had to be done by that time so that the plant could be put in operation. First Pond Creek wanted to be able to ship coal, and the C&O wanted to get freight for hauling coal, and nobody wanted to hold up anybody else. He said that on the additional work we could also start almost right away the construction of 25 of 200 houses
page 563 } which were going to be needed. That was to take care of the Pond Creek employees and other people who would be there at the little development which was

Alexander Hamilton Bryan.

afterwards known as Evanston. Other work was to follow. There was a big development planned which he outlined to me which had been approved by the Board of Directors, and he said that the work at the plant was going to be constructed during the winter under the most adverse conditions you could imagine, just like going up into the wilds of Alaska. There were no facilities at all. We would have to provide everything. He wanted us to do all the rest of the additional work. It was agreed then and there that we would do it.

Q. I will ask you the question in another form. Was not the Pond Creek Pocahontas Company entirely free to change their plans and to change their intention to do all of the work which you have outlined if conditions changed or if they saw fit so to do.

A. There were no dates set, Mr. Mullen, for starting the additional work. As I said, he told us that he wanted us to start on the 25 houses pretty quickly because he needed those facilities. He said that later on they were going to have a number two or number three mine, and when they were ready for that they wanted us to put in the concrete foundations.

A little later they said they had to have telephone page 564 } communications to and from the job site, and he wanted us to run a telephone line from Carver 11 miles over to the job site. That was some additional work that Mr. Salvati didn't mention at the time when we talked about the additional work. He said that as the coal preparation plant got into operation and more people were there and more things were needed, there would be machine shops and schools, a church, warehouses and stores; there would be all this additional work that would come along in the ordinary development of their plant. If Pond Creek Pocahontas Company decided to abandon the operation and never had put up the work, that would be one thing; but if they did it and we had assurance they were going to do it, we were going to do it on a cost plus 5 per cent basis.

Q. But they were entirely free, so far as any binding contract with you was concerned, to change their plan for that additional work.

A. If Pond Creek Pocahontas Company had decided to stop the whole thing, I don't think we would have had a law case against them, if that is what you want.

Q. You considered that the promise of that work, the understanding that you would have that work, was one of the considerations for the contract of October 28, 1948, to which you entered.

Alexander Hamilton Bryan.

A. Mr. Salvati said it was.

Q. As one consideration.

page 565 } A. I regarded that as one of the considerations.

Q. For entering into that contract.

A. I don't say that we wouldn't have entered into the contract without it, but Mr. Salvati volunteered the information and he seemed very pleased with the work we had done. He outlined all this additional work, and he wanted us to know about it. Mr. Salvati said he wanted us to go into the thing with our eyes open, that it was going to be a rough, tough, mean job to do, and that in deciding whether we would take it he would like us to know about this additional work which he wanted us to do, and that he said he would agree for us to do.

Q. The next contract that you received after October 28, 1948, was a contract to build a telephone line, was it not?

A. It was either a telephone line or the 25 houses.

Q. The evidence shows that the telephone line was dated December 8. That was a written contract, was it not?

A. Yes, sir.

Q. It specified the work—

A. Yes, sir.

Q. —the estimated cost, your compensation, and other conditions.

A. Yes, sir. They asked us to fix up an agreement on that, and we did it. I prepared the paper myself.
page 566 } Sometimes we had written agreements, and sometimes we didn't.

Q. When the company determined to build the 25 houses you also had a written contract, did you not?

A. Yes, sir.

Q. Specifying the estimated cost, your compensation, and other conditions.

A. I was asked to prepare that contract and did it. I submitted it to them, and they turned it over to Mr. Raleigh Campbell of their legal department, and he approved it.

Q. With these contracts were you furnished any plans and specifications?

A. On the work in Kentucky we were furnished some sort of sketches and rough drawings.

Q. Do you know who made those sketches?

A. They were made in the office of Mr. Menk or Mr. Sachs. I think. Mr. Menk was the general engineer for Pond Creek and Island Creek, and he was very busy making up drawings

Alexander Hamilton Bryan.

and ordering equipment. We were in touch with him a lot. Mr. Menk is the first person who took me to the job site.

Q. You have testified that you also had a contract for a schoolhouse. That was in addition to your contract of October 28, 1948?

A. Yes, sir. That was a part of the work Mr. Salvati discussed with me at the time we entered into the page 567 } contract dated October 28, 1948. There was no written agreement about it. We were told to proceed to construct the schoolhouse using lumber that came off the mountains there that was owned by Pond Creek.

Q. Were you furnished plans and specifications for that?

A. No. They gave us a sketch on that. They told us the approximate size that they wanted. It was a very simple building. They just had to outline generally the size of it and how many doors and windows they wanted. It was a one-story building made of frame, a frame schoolhouse.

Q. When you received the contract for the 25 houses that also was a written contract, was it not?

A. Yes, sir. They said they didn't know at the time who the contract would be with. They said they were forming a land holding company, and they didn't know the name of the company; it hadn't been formed. After that we were told it was Spring Fork Development Company, a wholly-owned subsidiary of Pond Creek. I fixed a contract for that work, sent it to Huntington and it was submitted to their legal department, approved, and it was executed.

Q. After you had constructed the 25 houses I believe you have testified that by reason of having been constructed with green lumber they were not as air-tight, and so forth, as they should have been.

page 568 } A. The lumber dried out and shrunk. The houses were unsightly.

Q. You were directed to put shingles on the sides, were you not?

A. Yes, sir.

Q. In construction contracts it is quite customary, is it not, that changes in the course of construction regularly occur?

A. During almost every job.

Q. And the contractor is instructed to make changes, and this additional work is compensated?

A. That is true.

Q. The instruction to you to put on those shingles was of that character, was it not?

A. If we had not had any understanding with Mr. Salvati

Alexander Hamilton Bryan.

at all, it would still have been considered a normal change which would be treated as additional work for which we would have been compensated, that is as far as the shingles are concerned, and the contract for the 25 houses.

Q. Did you ever receive or enter into any written contract for any other part of this additional work which you claim was promised you?

A. No. We only had three contracts written for the work in Breathitt County. There was one dated October 28, 1948, for the coal preparation plant, a contract for the page 569 } telephone line, and a contract for the 25 houses.

Q. When the Pond Creek Pocahontas Company in all of the contracts that it had let you for that work required written contracts, isn't it fair to assume that if they considered they had a contract with you for \$600,000 worth of work they would have required it to be put in writing?

A. No, not according to the way those people work. We did a lot of other work for which we didn't have any contract. Practically every job we had there was extra after extra after extra. They were using us almost as maintenance men in connection with some of their work. Sometimes whole buildings would be put up without a scratch. They were told in advance what we thought it would cost, and we would build them and they would pay it. They had confidence in us and thought we wouldn't cheat them. We don't hold ourselves out as being architects and engineers, but a lot of the buildings that we put up for Island Creek in West Virginia were from drawings and specifications which we prepared ourselves. A number of times they told me afterwards they wouldn't have done that with anybody else. The drawings were to sketchy. The specifications were not definite enough. If they didn't have confidence in us they wouldn't have worked under that arrangement.

Q. Those plans and specifications that you prepared were submitted to them for approval before they told you to go ahead with the work, weren't they, that you spoke of?

A. Oh, yes, they were submitted to them and they approved them, but the point I am trying to bring out is that they were not the finished product which you would get from an ordinary architect who would pin the thing down.

Q. You sent the plans in, and their men in charge of the construction would go over them and approve them where you prepared the plans and specifications, is that correct?

A. Yes, sir.

Alexander Hamilton Bryan.

Q. They would initial them or mark approved on them?

A. They would attach them to the contract. They are not attached to the contracts put into evidence. We have taken them off, but we have them, and if you want them we can produce them.

Q. No, but I understood you were speaking of where you said you did not have any contracts, where you didn't have any written contracts, you had drawn the plans and specifications.

A. After you put up some of those buildings you knew pretty well exactly what they wanted. You reached an understanding. We knew what they wanted, and they knew that we knew what they wanted. Based on that, we would submit a proposal. They might say "We want you to put up a colored lunch room, and the general outline will be like
page 571 } the appliance warehouse or store building No. 15,
except it will be smaller, so many feet wide and so many feet long. How much will you put it up for?" It happens that I think that particular job we did have a written contract on, and it was done on a cost-plus basis. A lot of the work was very simple. You almost didn't need to have drawings and specifications.

Q. But I gather from what you have said that there was always either some written contract or proposal accepted or plans and specifications submitted, approved by endorsement thereon, and instructions to proceed.

A. Not in every case. Of course we were instructed to proceed. If we just went out and voluntarily did work on our own that nobody told us to do, I suppose there would be some question about it. In getting instructions to proceed we were told what to do. Sometimes it was done on a cost-plus basis, and sometimes it was done on an estimate, a guaranteed price. If the work was such that we could guarantee it, we would. If we couldn't, we wouldn't. There was an enormous amount of work that was just added on to practically every job we did that really wasn't covered by any written agreement, that they just had us do. An account was kept of the time and the value of the materials, and we would bill them for it plus the usual mark-up, and the bill would be paid.

Q. It is customary in contracts for construction
page 572 } to add for extras, is it not?

A. It is customary, but it is not customary on a wholesale basis the way they worked it.

Q. Do you know whether any more of that additional work

Alexander Hamilton Bryan.

in Breathitt County has been done other than that which you were working on and which was finished up by someone else?

A. Well, we were asked to prepare specifications and plans for a heating plant to be installed in the tippie at the No. 1 mine, including some set-up by which they could thaw out frozen coal when it came in to the tippie in the wintertime. It was suggested that we take a trip to St. Paul, Minnesota, to see some contractors there named Butler—I think that is the place—to find out how they had worked it in connection with another coal preparation plant in another location. We didn't go out there, but we gave a lot of thought to it. I believe that some of our people were in touch with them on the phone, and we came to the conclusion that it is best to handle it by means of live steam. About the time, while all that was under discussion, this trouble came up, and then our agreements were terminated and we had to move everything away. After that, we were invited to submit a lump sum proposal, which we did. We did not do the work, and I don't know who did it. Maybe Pond Creek did it themselves.

Q. That was for the steam—

page 573 }

A. For the heating plant.

Q. You were not told why the contract was not awarded to you?

A. No. I never had an answer.

Q. You don't know whether you were low bidder or not?

A. I don't know whether there was any other bidder. We never heard. At about the same time we were invited to submit a bid for the construction of a store and some other dwellings that were much nicer than the ones that we had put up before. The first dwellings were just shacks, to tell you the truth. They were not much, but that is what they wanted and that is what the people out in that section seemed to be used to. On the second houses, which were for supervisory employees, they were supposed to be a little nicer. We submitted a bid for that work, and we didn't get it. I heard that the work was given to another contractor. I don't know the contract amount or what happened. I have heard that he lost money on the job.

Q. You are referring there to a bid you submitted under date of September 7, 1949?

A. That is right.

Q. For two six-room dwellings?

A. Yes, sir.

Q. And 13 five-room dwellings and a store?

Alexander Hamilton Bryan.

page 574 } A. That is right.
Q. Your bid was \$205,047?

A. Yes, sir. I don't have that in front of me. It has been put in evidence, but I think that is right.

Q. You don't know that your bid was the highest bid?

A. I don't know. I know this, that we worked out there and had plenty of experience working in winter conditions under that set-up, using that green lumber, with all the costs involved. If somebody else wanted to come in and give a firm lump sum price without taking account of those considerations, they were welcome to do it.

Q. Didn't you say just now that the person who bid on the contract lost money?

A. That is what I was told.

Q. Were you told what his bid was?

A. No, I don't.

Q. Were you told that your bid was \$75,000 above his?

A. No, I never heard what his bid was.

page 575 } Q. You were not awarded the contract?

A. No.

Q. You were not given any reason?

A. No.

Q. You were not told it was because of any of the difficulties you had already had there, were you?

A. No, we were not given any reason. We, frankly conditioned the bid in certain ways that I think were objectionable to Pond Creek. For one thing, we said that we expected them to keep those roads in passable condition so we could get in and out, and I don't think they liked that very much.

For the second thing, we asked that they provide builder's risk insurance with extended coverage, which would protect the buildings against loss or destruction from malicious mischief or acts of vandalism. That was put in there purposely in order to get some protection in case the United Construction Workers and that crowd should come in there and burn the building down.

Q. But the Pond Creek Pocahontas people never told you that you were turned down because of the trouble you had had there prior to that?

A. No, we were not informed. We never had an answer, I don't believe.

Q. Were you at that time still performing some work in West Virginia?

page 576 } A. We had started work on the boiler plant at Bartley, West Virginia, down near Welch.

Alexander Hamilton Bryan.

Q. At Buckley, you say?

A. Bartley. B-a-r-t-l-e-y. It is a little place near Welch where Pond Creek has some mines.

Mr. Mullen: I have been in all that country, myself.

Mr. Robertson: So have I.

By Mr. Mullen:

Q. You were never interfered with in that work, were you?

A. Interference was threatened.

Q. You completed your work, didn't you?

A. Yes, we finished it.

Q. There was no actual attempt made to organize any of your workmen there by anyone else, was there?

A. As far as I know, there wasn't. We were using A. F. of L. people. Protest was made, but in the meantime we had started this case. Whether that acted as a deterrent, I don't know.

Q. In this additional work which you claim was promised you, the largest item is 200 houses at \$300,000. Do you know whether they have been built?

A. I don't think they have all been built. Some of them have been built.

page 577 } Q. The 25 that you built, plus the 15 that you said you bid on—they are all the houses that have been built, aren't they, to your knowledge?

A. I don't know. I know that they have been built, and what else has been built, I couldn't say.

Q. You don't know that they have decided not to build those houses, those 200 workmen's houses?

A. No. I don't think they have. They might have postponed it for a while. I bet they build them before they are through.

Q. Or it is possible that they have decided to let the miners live at their homes instead of building company shacks and a company village?

A. They might change their mind.

Q. You testified that on September 29, 1949, your company submitted a proposal to Pond Creek Pocahontas Company to construct an addition to a store building at Bartley, West Virginia, either on a cost-plus basis or with 8 per cent or a lump sum. You state you were not awarded that contract?

A. Let me get my schedule here. (Referring to papers.) No, sir.

Alexander Hamilton Bryan.

Q. Do you know whether there were any other bids for that work?

A. Well, they seemed to want to have the work page 578 } started on that store right away, and because of the location of the store it was uncertain as to exactly how much work would be necessary. We didn't have time to go into it fully enough, and submitted a proposal on the basis of cost-plus.

After that, they decided that they would attempt to fix up some drawings and specifications themselves. So, no action was taken on that bid, as far as I know.

Q. But you were never notified that your bid was not considered because of any happenings in July and August prior?

A. No.

All we knew was that we had gotten an enormous amount of work before. Every bid we made, we seemed to get.

From the time this thing happened in Kentucky, we were trying our best to maintain our connection, and were doing everything we could, didn't want to let any opportunities slip—if we stopped bidding, we knew we would be out, so we kept trying, but we never could get any more.

Q. Mr. Bryan, you have stated a number of times, in the course of your testimony, that the United Construction Workers would not recognize an A. F. of L. contract; that they would try to organize men even if they had an A. F. of L. contract.

Have you ever worked employees in the A. F. of L. union on work for a company where either the employees of other people on the work, the same as you were, were page 579 } U.C.W. members?

A. We have worked in various plants where the employees of companies were represented by the CIO, sometimes by A. F. of L., sometimes by District 50, sometimes by United Mine Workers. I don't recall anyone was represented by the United Construction Workers. I never heard of United Construction Workers before October, 1948, when Mr. Robert Fohl came to see me. I didn't know what they were.

Q. Where were you working then?

A. Solvay Process in Hopewell.

Q. Who is Mr. Robert Fohl?

A. Robert Fohl is Regional Director for United Construction Workers and District 50 in Richmond. I forget the number of the region. It is shown on the tabulation of Regional Directors as Region 19.

Mr. Fohl said he had organized our workers and laborers

Alexander Hamilton Bryan.

over at the Solvay plant in Hopewell. I told him we couldn't deal with him; that I would check into the matter. He and a man named Walter Shuey came to see me, and I called in Jack Joinville in the meantime. Jack Joinville, President of the Building Trades Council in Richmond, met with those men in my office in Richmond, with me.

After some discussion they went out, and I never heard any more from Mr. Fohl. It developed that none of our laborers had joined United Construction Workers at all.

page 580 } Q. Was there a Hopewell office at that time, of the UCW?

A. The office was in Richmond, the regional office. They may have had a branch office in Hopewell. I think they did. He said he didn't have any agreements with Richmond contractors. He mentioned two Hopewell people.

Q. Now, Mr. Bryan, didn't Mr. Fohl phone you in the week of October 23, 1948, advising you that he represented your common laborers on the Solvay job, and asked for a conference with you?

A. If you will let me look at my notes, I will tell you.

Q. Go right ahead.

A. It was sometime in the latter part of October or the first part of November, but I will give you the exact dates in a minute. (Referring to papers.)

Yes, sir, October 21 is the date.

I didn't have a memorandum as to whether or not Mr. Fohl called me or came to my office, but I do have a memo of 10-21-48, Mr. Robert R. Fohl, United Mine Workers, District 50, United Construction Workers, David Hunter, Hopewell representative, Utilities Engineering and Construction Company, Coastal Stevedoring Company. He did telephone me first. That must have been the first date.

Q. All right.

Didn't you tell him that you were going out of town and couldn't talk with him then, but you would talk with him about the matter on October 27?

A. I told him, my recollection is, that I was busy and couldn't see him, but that I would see him later. I didn't know who he was or anything about it. I never heard of United Construction Workers.

Q. But he told you on the phone who he was?

A. He told me on the phone. He must have, or I wouldn't have written it down here.

Alexander Hamilton Bryan.

Q. And told you what he was phoning for?

A. He said that they had organized our laborers in Hopewell and wanted us to recognize them.

Q. Have you a memorandum of the next day you saw him?

A. The next memo I have is October 26, 1948. Whether that is a memorandum of another telephone call or a conference, I don't recall. My recollection is that it was another telephone call.

Q. Whether a telephone call or a conference, you again put him off until November 1, did you not?

A. That is right. He said—I have it written down again—“Robert R. Fohl, 311 West Grace Street, 7-7592, Regional Director, United Construction Workers, UMW; Joseph O'Hara, representative, Local 655-A, Hopewell, Virginia. No agreements with Construction Companies in Richmond. Have agreements with Utilities Engineering and Construction Company, Hopewell, Virginia, Coastal Stevedoring Company, Hopewell, Virginia.”

He mentioned the man who was Assistant Manager at the Solvay plant, Mr. George Owen—I think he is dead now. He claimed that he had 20 men signed up on our job at Hopewell. He was anxious to see us. I think that was a telephone call.

I put him off. I was anxious to have Mr. Joinville there when he came in.

Q. That was the 27th?

A. 26th, I have.

Q. 26th, all right.

Then you got in touch with Mr. Joinville, didn't you?

A. Yes, sir.

Q. And you and Mr. Joinville, working together, had him sign up those common laborers, and you gave them a raise of 9 cents, and that was between the time of the 27th or 26th, and November 1st that you had put Mr. Fohl off to, was it not?

A. No, I think you are wrong about that. The wage rate for laborers in Richmond was 90 cents, and it has been 90 cents for a long time. It recently has been raised. The A. F. of L. union rate has been raised to a dollar in the last week or so. I don't recall any wage rate increase. The Business Agent for the laborers' local union in Richmond was Mr. Kendig. He was at that time. He is not now. I got in touch with Jack Joinville and said that the United Mine Workers people were after us to recognize them as the representative for our laborers at Solvay,

Alexander Hamilton Bryan.

and I was afraid it would cause trouble. Under our agreement with the Building Trades Council in Richmond, we couldn't do that.

Q. Did they get busy and sign them up?

A. Certainly. I don't know whether you are familiar with conditions in the building trades, but it leads to all sorts of trouble among the various crafts.

Q. On November 1st, then, you finally met with Mr. Fohl. You had Mr. Joinville there in the office, too, did you not?

A. Joinville, yes.

Q. You told Mr. Fohl then, "I am sorry, but these men are now members of the American Federation of Labor union," did you not?

A. No. I told him that we had an agreement with the Building Trades Council, and we couldn't make an agreement with him, but that my investigation showed that the laborers were not members of the United Construction Workers anyway, and I had gotten in touch with Mr. Kendig. I think I told him that. There is no reason why I shouldn't have, and told

Kendig if these men were not in his union he had
page 584 { better get busy; that somebody else was going to
take them in.

Q. He got busy and got them in?

A. I don't know whether he did or not. I know Mr. Joinville and Mr. Fohl had quite a pow-wow in my office, and they went out together, and that was the last I ever heard of it.

Q. Didn't Mr. Fohl tell you at that time that as long as you said they were signed up by the A. F. of L., he would honor the A. F. of L. contract and he would return to the common laborers the money they had paid him to join UCW?

A. No, sir. He certainly did not. I don't know what kind of deal or arrangement Mr. Joinville or Mr. Fohl made when they went out. Joinville just asked Mr. Fohl to lay off.

Q. By "lay off," he meant recognition of the A. F. of L. by UCW?

A. I don't know what you could say about that, because United Construction Workers certainly didn't recognize the A. F. of L. at Wheelwright when they went there with 200 or 300 men and broke up a job.

Q. I am asking you what your own personal experience is. You did go to the A. F. of L. after Fohl had phoned you, and took steps to block him off from your laborers?

A. Mr. Mullen, United Construction Workers is in direct competition with the A. F. of L. unions in organizing building

Alexander Hamilton Bryan.

trades workers, and if the United Construction
page 585 } Workers came in on a job, there is no telling what
trouble and confusion would finally be the result.
You either have a United Construction Workers organization
or have an A. F. of L. organization. We happened to be lined
up with the A. F. of L., and I wanted to keep it that way.
There were plenty of other people that Mr. Fohl could try to
organize, and I saw no reason why he should come and pick
on me.

Q. As long as you had unorganized labor, any union was
free to try to organize them, weren't they?

Mr. Robertson: I call to the Court's attention that Mr.
Mullen is getting right much into points of law. I don't ob-
ject to it. I just wanted you to know that I knew what you
were doing.

The Witness: I say they are free to organize in a peaceful
sort of way. They haven't a right to go there with guns and
threaten them.

By Mr. Mullen:

Q. There were no guns and no threatening at Hopewell,
were there?

A. No, but there have been at other places.

Q. And you did succeed in having them blocked off at Hope-
well?

A. I didn't succeed in blocking them off. I just told Mr.
Fohl I couldn't recognize him; that I was dealing with the

A. F. of L. unions, and for him to go work on
page 586 } somebody else, and let me alone.

Q. You didn't tell him that until after you had
put him off long enough to get the A. F. of L. people to get on
the job?

A. Of course, I got in touch with the A. F. of L. people. I
would have been very derelict in my duty if I hadn't.

Q. Yet you left him under the impression that you would
talk with him about representing your laborers?

A. No, I don't think so, necessarily. He said that he rep-
resented them, and I said, "I will check into it," and I did
check into it, and found out he was wrong. He either told
me a story or was mistaken, because he didn't represent the
laborers.

Q. How do you know he didn't represent them?

A. Because we checked, and they said so.

Alexander Hamilton Bryan.

The Court: Mr. Mullen, I hate to break in on this examination, but I promised one of the jurors that I would recess at 12:45. It is 12:45 now, and we will recess until 2:15.

(Whereupon, at 12:45 o'clock p. m., a recess was taken until 2:15 o'clock p. m., of the same day.)

page 587 } AFTERNOON SESSION.

2:15 p. m.

Mr. Robertson: If Your Honor please, Mr. Mullen hasn't come yet, but my attention has been called to the fact that I failed to offer these applications in evidence and I would like to offer them now.

The Court: Do you want to wait for Mr. Mullen?

Colonel Harris: I don't think that is necessary. I don't think he would object to it.

Mr. Robertson: I ask that the 16 applications be marked Plaintiff's Exhibit No. 57, sub 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16.

Colonel Harris: Judge, we might put in an objection, that no proper and sufficient predicate has been laid.

The Court: Very well.

Colonel Harris: And an exception to Your Honor's ruling.

(The documents referred to were marked Plaintiff's Exhibit 57, sub 1 through 16 and received in evidence.)

Mr. Fred G. Pollard: I want to apologize to the Court for our lateness, Your Honor. We were tied up in a parking lot and couldn't get our car.

The Court: That is perfectly all right, Mr. Pollard.

page 588 } Whereupon,

ALEXANDER HAMILTON BRYAN

the witness on the stand at time of recess, resumed the stand and testified further as follows:

Mr. Mullen: Mr. Reporter, will you read the last few questions and answers, please?

(The last few questions and answers read by the reporter.)

Alexander Hamilton Bryan.

CROSS EXAMINATION—continued.

By Mr. Mullen:

Q. Do you think that when on October 21 you told him you would talk to him later, that you had nothing but the A. F. of L. Union, and again on the 27th when you told him you would still talk to him later, that he did not have a right to assume that in the meantime you were not going to do anything to prejudice his position?

A. I didn't tell him on October 21 that our employees were not represented by the A. F. of L. On the contrary, I told him that they were, and he insisted that he had organized our labor. So I said I would look into it and talk to him again. I try to be polite to people.

Q. Between that you got hold of Mr. Joinville and had him go to sign them up in his union?

A. I certainly did.

Q. Then on November 1 you said "I am sorry, page 589 $\frac{1}{2}$ they are in the A. F. of L. union."

A. I told him on October 21 that we had our contractual agreements with the A. F. of L. unions, and that we couldn't deal with his crowd. Mr. Fohl insisted he had already organized our laborers on the Hopewell job, and I said I would have to look into it. I did look into it and I found that Mr. Fohl was wrong. Later Mr. Fohl kept insisting and said he wanted to come down and talk to us. I said I would see him, and I had Mr. Joinville there, and I told him finally once and for all.

Q. And you had had Mr. Joinville in the meantime sign up the laborers?

A. I don't know what Mr. Joinville did. I told him that representatives of the United Mine Workers were trying to cause us trouble over at Hopewell on our job, that all of our employees were members of A. F. of L. unions. Let's be practical about this.

The Court: Just answer the question, Mr. Bryan.

By Mr. Mullen:

Q. Did you have skilled laborers and common laborers on that job?

A. We had practically every classification of labor involved in all types of work in a chemical plant.

Q. Prior to that conversation with Mr. Fohl were your

Alexander Hamilton Bryan.

common laborers members of any union?
page 590 } A. I think that some of them were, maybe some
of them were not.

Q. You don't know?

A. The A. F. of L laborers local union around here has not been as strong as it might be.

Q. How many common laborers did you have on the job there?

A. Of course that varied. The job started out very small, and before it was over we had spent a million and a half dollars in labor alone. I don't mean for common laborers but for pipefitters and electricians and on millwrights and iron workers and brick masons and carpenters and everybody else.

Q. How many common laborers did you have on October 21?

A. Mr. Mullen, I couldn't tell you to save my life without looking at the payrolls. If you want that information I will try to find it for you.

Q. I would like to know how many you had.

A. When I get back to my office I will try to get the information.

Q. Will you also ascertain whether or not there was an increase in their wages at that time?

A. Yes, I will. My recollection at the present time is that there was no wage rate increase, but I might be mistaken.

If there was, it wasn't just for that job. It was
page 591 } a general increase all over.

Q. During the course of the testimony you have spoken of carpenter helpers and common laborers. Is that a different classification?

A. They have carpenter apprentices who are learning the carpenter trade, and they also have laborers who sometimes assist the carpenters and wait on them and perform very much the same duties that a carpenter apprentice would. A carpenter helper is a term broad enough to take in laborers that specialize in helping carpenters and also carpenter apprentices, I think.

Q. Is there a different wage rate for carpenters' helpers and laborers as between the two?

A. In some localities I think that is true. We have made no distinction there on the jobs in Breathitt County.

Q. You class them all as common laborers in Breathitt County?

Alexander Hamilton Bryan.

A. They were classified on our payroll as laborers, but many of them were particularly occupied in helping carpenters rather than in digging ditches and doing things of that sort.

Q. In my opening statement I referred to the several large international unions besides the railroad brotherhoods. Do you know what the difference is in the organization of the CIO, the Congress of Industrial Organizations, page 592 } and the A. F. of L.?

A. I think I do.

Q. The CIO is what is known as an industrial organization. They organize a whole industry, do they not, such as the automobile workers and steel workers, regardless of crafts?

A. The United Mine Workers have an organization that is organized on an industrial basis, and for a long time, certainly from 1898 up until 1935 or 1936 the United Mine Workers was affiliated with the American Federation of Labor. At about that time after the National Industrial Recovery Act was passed Mr. John L. Lewis and some of the other officers and leaders of the international unions affiliated with the American Federation of Labor were very anxious for the American Federation of Labor to endorse a program for the organization of workers on an industrial basis rather than on a craft basis. The International Brotherhood of Carpenters and Joiners is a union organized on a craft basis. The plumbers and pipefitters, the United Association of Plumbers and Steam Fitters, is organized on a craft basis. The same thing applies to the Iron Workers International Union, and the Painters International Union. But the printers, the United Mine Workers, the clothing workers, and some others were very anxious to take steps to organize workers in the mass production industries such as automobiles, page 593 } radios, rubber, on an industrial basis. At the

A. F. of L. convention in Atlantic City in 1935, November or October, 1935, a major quarrel developed on that issue. The Committee on Resolutions voted 8 to 7 in favor of organizing on a craft basis instead of on an industrial basis. At that time Mr. John L. Lewis, Mr. Dubinsky, and some others, decided to form what was known as the Committee for Industrial Organization. Mr. Lewis was made chairman of that committee. It was composed of the presidents of eight international unions affiliated with the American Federation of Labor and commanded about a million workers. From that time on, Mr. Lewis, who was a vice presi-

Alexander Hamilton Bryan.

dent of the American Federation of Labor, resigned shortly after that Atlantic City convention in 1935. The American Federation of Labor opposed the organization of workers on an industrial basis opposed the committee for Industrial Organization, and expelled from the American Federation of Labor at a later date the unions that were affiliated with or connected with the Committee for Industrial Organization. Also, the United Mine Workers in turn expelled from its organization Mr. William Green, who had been in the United Mine Workers for many years and at one time was president of District 6. After that, the Committee for Industrial Organization held a convention and the name was changed to Congress of Industrial Organizations. The two unions have been in competition with each other from that time on in the organization of workers.

Q. Mr. Bryan, I didn't want to interrupt you, but the Congress of Industrial Organizations is an industry-wide union, isn't it?

A. That is correct.

Q. And the American Federation of Labor is a craft union?

A. That is correct. Primarily. There may be some unions in it that are not.

Q. The United Mine Workers for their mine workers is also an industrial union.

A. That is right.

Q. District 50 and the UMW take in both, either industry or crafts or unskilled workers, don't they?

A. No. When this quarrel over the method of organizing workers was developing, it was at the 1936 convention of the United Mine Workers that they amended their charter so that the jurisdiction of the United Mine Workers would include not only coal miners and people working on coke ovens, but would include coal processing plants.

Q. Mr. Bryan, I don't want to interrupt you, but without going into that—

Mr. Robertson: Excuse me one minute. If Your Honor please, he asked him the question and I think the witness is entitled to answer it without being caught off in the middle.

Mr. Mullen: It is not responsive to the question.

Mr. Robertson: I think it is responsive.

The Court: Read the question back.

(The pending question was read by the reporter.)

Alexander Hamilton Bryan.

Mr. Robertson: If Your Honor please, I don't want to argue against the ruling of the Court.

The Court: I am not ruling that he can't answer further, but he has answered the question. If he wants to qualify it, he is entitled to do it.

Mr. Robertson: I don't want to keep on interrupting, but I have studied this thing very much myself, and I know that a lot of these questions just can't be answered yes or no and then quit.

The Court: If the witness desires to qualify his answers, he has a perfect right to do so, but make it as brief as possible.

The Witness: What I was trying to say is this: That the UMW amended its constitution so that its jurisdiction would include coal processing plants. After the quarrel with the American Federation of Labor over the method to be used in organizing workers came to a head and a show-down, the United Mine Workers of America took steps to organize district 50 pursuant to the change made in the constitution early in 1936, and District 50 was organized, its charter was finally issued in September, 1936. It was then while
page 596 } affiliated with the United Mine Workers considered itself in a sense a part of the CIO. That is shown by the fact that one of the publications is called the CIO news, district 50 edition. The workers employed in District 50 were organized on an industrial basis, although they included a multitude of types of businesses. It was not considered a craft union in any sense of the word.

By Mr. Mullen:

Q. You are now speaking of the CIO?

A. I am speaking—

Q. I am speaking of District 50 after it was chartered by the United Mine Workers of America as a district.

A. They represented gas and coke workers on an industrial basis.

Q. And also took in any others?

A. Later on, the charter was further amended to include any other industries approved by the International Executive Board, and then they went to town to take in everything in sight that didn't include mining coal.

Q. All right. That is what I am getting at. You testified at length as to the different classes of workers that they took in. Wasn't that entirely within their right to do that?

Mr. Robertson: I object, Your Honor.

Alexander Hamilton Bryan.

The Witness: Nobody I know of has denied the page 597 } right of District 50 to try to organize anybody they want to. The only question is the methods used in doing the organizing. After all, between these three big unions you have spoken about there is the keenest type of competition in connection with the organizing of workers. District 50 was organized as an arm or branch of the United Mine Workers to compete first with the A. F. of L. and then after the CIO and the United Mine Workers split, it was then to compete with the CIO.

By Mr. Mullen:

Q. And it does compete with both of them?

A. It competes with them repeatedly. It is their agent to do it, that is, the agent of the Mine Workers.

Q. You have stated that from your study of the United Mine Workers and the United Construction Workers and District 50, supreme power is vested in an international convention which meets every four years.

A. It used to meet every two years, but now it is every four years.

Q. That under the international convention there is an International Executive Board which corresponds to the Board of Directors of a corporation,—

A. Well—

The Court: Let him finish the question. Finish the question, Mr. Mullen.

By Mr. Mullen:

page 598 } Q. And that there are a president and other officers. You have been asked as to the chairman of the organization committee of District 50, secretary-treasurer and comptroller of District 50, and the national director and national comptroller of the UMW, as to how they were appointed or elected. You replied that each of these were appointed by the international president with the approval of the International Executive Board.

Where the International Executive Board has approved or designated a person for a certain position, it is merely a form for the international president to issue a commission in accordance with those directions of the international board, isn't it?

A. The constitution of the UMW—

Alexander Hamilton Bryan.

The Court: Can you answer that yes or no and then qualify it, Mr. Bryan?

The Witness: No, I can't answer it yes or no, Your Honor.

The Court: All right, sir. Go ahead.

The Witness: The constitution of the United Mine Workers of America provides that between international conventions the complete management and control of the organization of the United Mine Workers, including all of its districts and district 50, the various divisions, is vested in the international executive board, which has supreme
page 599 } judicial and executive power over all of those districts and over all of its members. Under that you can say that the International Executive Board could appoint anybody it wants. But there is another provision in the construction which provides for Mr. Lewis, the President, the international President, to make appointments that are necessary, with the approval or subject to the approval of the International Executive Board. I would say that both of them make appointments, but it is customary for Mr. Lewis to do the appointing subject to the approval of the Board.

By Mr. Mullen:

Q. Coming back, then, to the question, when the executive board has approved or designated a person for appointment to any of the jobs mentioned, it is purely a matter of form for the president to carry out the orders or approval of the international board and issue proper commissions?

A. If the International Executive Board did that, I am certain that Mr. Lewis would carry through the appointment. If he didn't all the International Executive Board would have to do would be to disapprove Mr. Lewis' appointment.

The constitution further provides that between meetings of the International Executive Board Mr. Lewis is to run the show.

Q. It is no different from the President of a
page 600 } corporation running it between meetings of the Board of Directors.

A. Mr. Lewis has power to remove the international board members if he wants to.

Q. That is a matter that you have no knowledge of.

A. It is provided in the constitution. Ordinarily the president of a corporation can't do that.

Q. Your contract with the Richmond Building and Construction Trades Council which you have put in evidence is dated May 15, 1947, is it not?

Alexander Hamilton Bryan.

A. Yes, sir.

Q. And was executed at that time?

A. At about that time, yes, sir.

Q. At about that time. What is the Richmond Building and Construction Trades Council?

A. It is an association of local unions affiliated with the building trades department of the American Federation of Labor having their principal offices in Richmond.

Not all of the A. F. of L. local unions, Richmond A. F. of L. unions in the building trades, are affiliated with the Building Trades Council. There are some that are not, but there are a lot that are, and those that are make up the Building Trades Council.

Q. What is the territory in which the Richmond Building and Construction Trades Council has jurisdiction?

A. There is no jurisdiction. The jurisdiction page 601 } of the Council as such, each local union affiliated with the Council has jurisdiction, supposedly, over certain areas. Those areas differ depending upon the local union involved.

Q. An act was passed by the General Assembly of Virginia in 1947 known as the Virginia Right to Work Law, which was signed by the Governor on January 21, 1947, but did not become effective until April 28, 1947. Your contract with the Richmond Building and Construction Trades Council was signed just a few days before that law became effective, was it not?

A. It was signed about April 15. I know it was signed before the law became effective.

Q. You and the Richmond Building and Construction Trades Council purposely entered into it in order to get in before that law became effective, did you not?

A. Well, we were anxious to have an agreement that would be within the law, and we were advised that this could be done. It wasn't unlawful if we wanted to do it that way and if it wasn't unlawful, there as no reason why we should not do it.

Q. But the purpose was to get a contract before the Virginia law which had already been passed became effective?

A. We had a contract with the Building Trades Council before that time, and this contract was prepared and signed on or about April 15, 1947, and we purposely page 602 } tried to make it in such a way that it would be within the law, which I believe it is.

Alexander Hamilton Bryan.

Q. Could you have entered into such a contract after April 28, 1947?

A. I can only express my opinion about it, if you want it. I will tell you I think that it probably would be unlawful and in violation of the Virginia Right to Work Act, but because it was entered into before the law became effective and it never has been extended or renewed, the contract is good and is not in violation of the Virginia Right to Work Act. We have sought the advice of counsel on the subject, and that is what they think.

Q. How long has that contract run?

A. The contract with reference to duration provides as follows. Do you want me to read it?

Q. Yes, you can read it.

A. "This agreement shall become effective April 15, 1947, and shall continue in full force and effect until terminated by the written notice provided for in the paragraph next below.

"Either party to this contract shall have the right to terminate same on April 15, 1949, by giving three months' prior or written notice to the other. After April 15, 1949, either party to this contract shall have the right to terminate this contract on its anniversary date, that is, April 15, page 603 } by giving three months' prior written notice to the other. It is expressly understood and agreed that this contract shall continue in full force and effect without interruption until such time as it may be terminated by the written notice hereinabove provided for, and that the failure of either party to give notice to terminate shall not be construed as a renewal or extension of this contract."

So the contract runs indefinitely until terminated.

Q. Did either you or the Richmond Building and Construction Trades Council ever give notice to terminate it?

A. We have never given notice to terminate it. The Building Trades Council did give us notice to terminate it about a year ago, but it was too late, and afterwards they agreed to it.

Q. The agreement provides that the contractor agrees with each local union to employ only members of that local union when working in the area over which it, the local union, has jurisdiction and when performing work over which it, the local union, has jurisdiction.

A. Which article is that, Mr. Mullen?

Q. That is Article 2, section 1, the first sentence.

Alexander Hamilton Bryan.

A. Yes, sir.

Q. Is that in labor parlance a union contract, a union shop contract?

A. It is a closed shop contract.

page 604 } Q. That is a closed shop contract.

A. That is a closed shop contract. It has not been strictly enforced in all particulars at all times.

Q. The contract uses the words "local union" and "other local unions". What is the difference between those?

A. That is covered by Article 1 under the heading "Definitions." Look on page 1. As used herein the words 'Local union' shall mean a local union now or hereafter associated with the Council. As used herein the words 'other local unions' shall mean a local union which is affiliated with the National Building Trades Department of the American Federation of Labor, but which is not associated with the Council.

Q. When you got out to Kentucky there were other local unions under the definition of this contract, were they not?

A. Yes, that would be covered by that.

Q. There was not a wage scale in this contract, was there?

A. No, sir.

Q. So this contract was merely a contract to make contracts with either unions in the local council or other local unions if you got beyond its jurisdiction.

A. There is a provision in the contract about wages, I believe.

Q. Article 4.

page 605 } A. It doesn't state what the amount shall be, but that we agree to pay the prevailing wage rate in whatever rate in whatever territory might be involved.

Q. So when you went—

A. As a matter of fact, it says "prevailing wage rate is the same as may have been established as the result of collective bargaining."

Q. When you went then into Kentucky you had to make a contract with the local union, and that was a contract that provided for the wages that would be paid?

A. It wasn't always customary to make a contract. The only contract that we actually made on the Kentucky job was for the carpenters, and they specifically asked for it. We have gone to a lot of other places, and I would say that it is not customary to make a contract with each local union every place you go. On the Kentucky job when we started we got in touch with the Charleston, West Virginia, Iron Workers Union. We found out what the scale was. We asked for men,

Alexander Hamilton Bryan.

and they were sent, and we paid the scale. The same thing for the electricians. We called the Lexington Local and said that our subsidiaries, Virginia Mechanical Corporation had an agreement with the IBEW, International Brotherhood of Electrical Workers, and we would appreciate it if they would send us men, and found out about the wage rate, the terms and conditions. The men were sent to us. The page 606 } same thing happened for the plumbers and pipe-fitters. In the case of the carpenters there were two local unions very close together, and it was a question which one was closest to the job, whether it would be the Prestonburg local or the Paintsville local. At that time there was no Salyersville local. After checking into it, it looked like the Paintsville Local was closest to the job and so we did make an agreement with them and I think that they wanted the agreement because of some question that might be raised as to whether it was Prestonburg or Paintsville that had jurisdiction over the work.

Q. There was no Salyersville Local at that time?

A. No.

Q. When was that organized, do you know?

A. Not of my own knowledge. I have heard it was in May, 1949.

Q. At the later date, though, you did have some negotiations or talk with the agent for that local?

A. After the Salyersville local was chartered by the United Brotherhood of Carpenters and Joiners, the Salyersville Local was anxious to claim jurisdiction over the job because it definitely was the closest local union, but under the contract which we had with the Paintsville local, the Paintsville Local did have jurisdiction. So there was some friction there between those two local unions as to who was going

page 607 } to have the jurisdiction. We continued to recognize the Paintsville Local in accordance with our agreement. After our work was interrupted and the men were threatened and intimidated and we couldn't get the Paintsville carpenters to go back to work, we did approach Robert Poe and asked him please to try to man the job.

page 608 } Q. In other words, there was friction between those two unions over your work?

A. That was something over which we didn't have any control, but that would have been straightened by the international representatives.

Q. When you got the iron workers and the hoist operator, the millwright foreman and millwrights, which I believe you

Alexander Hamilton Bryan.

say you got from various unions, did they transfer to the Paintsville union and become members of the Paintsville union?

A. I don't know whether they made them transfer into the union or not. Some unions require people to get clearance cards and come in, and some don't. Those millwrights came out of the Ashland local, I think. Anyway, they reported to the Business Agent of the Paintsville Local, through the facilities of the Paintsville Local.

* * * * *

By Mr. Mullen:

Q. This contract that you had with the Richmond Council you testified is, with regard to the local unions, a closed shop contract. With regard to other local unions, that page 609 } is, those that are not in the Richmond Building and Construction Trades Council, it is what is known as a preferential shop contract?

A. The agreement says on that point: "With respect to work which the contractor may have in any area over which a local union does not have jurisdiction, the contractor agrees to contact the other local union which has jurisdiction over that area to request that other local union to furnish qualified workers, and to give preference to members of that other local union in employing workers."

Q. It is, then, what is known as a preferential shop contract with regard to other local unions?

A. I say that is right. I don't know exactly what a preferential contract is, but this says that we would give preference to the other local unions.

Q. When going out to Kentucky, you entered into a contract with the Carpenters' Local Union No. 646, United Brotherhood of Carpenters and Joiners of America, did you not?

A. Yes, sir.

Q. That reads, does it not: "Carpenters' Local Union No. 646, United Brotherhood of Carpenters and Joiners of America, on behalf of each member thereof"?

A. Could I get my copy of that contract?

Q. Surely.

page 610 } (Witness obtaining document.)

Mr. Mullen: Will you read him the question?

Alexander Hamilton Bryan.

(The question was read by the reporter.)

The Witness: The opening paragraph of the agreement reads as follows:

"This agreement made and entered into this 14th day of December, 1948, by and between Construction contractors, builders, and associations, signatory hereto, hereinafter referred to as Operators, parties of the first part, and Carpenters Local Union No. 646, United Brotherhood of Carpenters and Joiners of America, on behalf of each member thereof, parties of the second part, and covering all the operations of the said parties in the territory or jurisdiction of said Local Union No. 646."

By Mr. Mullen:

Q. The signatory association referred to as the operator was the Laburnum Construction Corporation?

A. That is right.

Q. That provided for an exclusive bargaining agency with that local union, did it not?

A. The next portion of the contract reads as follows:

"It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties as defined and set out in the agreement. It is agreed that the Local Carpenters Union No. 646, United Brotherhood of Carpenters and Joiners of America, is recognized as the exclusive bargaining agency representing the employees of the parties of the first part in the territory and in connection with work over which the parties of the second part have jurisdiction."

Q. The contract being for the exclusive joint use and benefit of the contracting parties, and one of the contracting parties was that union, acting on behalf of each members thereof?

A. That is right.

Q. It didn't cover anybody else than those designated in the contract, isn't that right?

A. That was an agreement that covered work over which the United Brotherhood of Carpenters has jurisdiction, within the area over which that local union has jurisdiction.

Q. But as you read, it was for the exclusive use and benefit of the contracting parties; and the contracting parties were the Laburnum Corporation and the members of that union,

Alexander Hamilton Bryan.

and the contract specifically states it is made on behalf of the members.

A. That is what the agreement says.

Q. It didn't cover anybody but members of that union, did it?

A. This agreement just covered the members of that union. It didn't have anything to do with iron workers or anybody else.

page 612 } Q. It didn't have anything to do with common laborers?

A. It did have something to do with the millwrights, because they are part of the United Brotherhood of Carpenters. They are members of that international union. Other than the carpenters and millwrights, this agreement didn't affect anybody else.

Q. And didn't affect the common laborers specifically?

A. No, not specifically. Indirectly it might, but not specifically.

Q. Was Local Union No. 646 ever certified by the National Labor Relations Board to you as the bargaining agent for your employees?

A. Not that I know of. If they were, I haven't heard of it.

Q. You would have been given notice if they certified them to you as the bargaining agent, so as to bind your company, would you not?

A. I don't know much about that. If they had been certified, I feel sure I would have known about it. How I would have known about it, I don't know.

Q. You don't know whether they ever made application for certification, whether the union ever made application for certification?

A. I doubt very much that they did. I don't know of a single local union in the City of Richmond that
page 613 } ever has made application for certification. It is almost not customary. That is the way it works.

Q. You don't know of unions in Richmond that have applied for certification—

A. In the building trades. I don't mean in other lines.

I might say about that, that the matter had been taken up from time to time with Mr. Denham before he got put out, and nobody yet had been able to figure out how to work the thing out in the building trades. Employees shift around too much. They are not personal employees like you would have in a plant.

Alexander Hamilton Bryan.

Q. When you entered into this contract, had you already employed your skilled laborers?

A. Which contract are you referring to?

Q. The contract with Local No. 646.

A. When this was a question as to which union would have jurisdiction over the work in Breathitt County, that is, the Prestonburg Local or the Paintsville Local, one of our representatives got in touch with the international representatives in Louisville. I think I am correct about this. And it was decided by him that Paintsville would be the proper Local to deal with.

We had started to work before this agreement was signed, but we also agreed orally to recognize the Paintsville Local as having jurisdiction over the work in Breathitt County before this agreement was signed, dated December 14. We started to work in the first part of November.

Later on, after the Salversville Local was organized, the two locals sort of divided up the work.

Q. If a carpenter who was not a member of the union had applied for employment, would you have employed him?

A. We would have told him to go get a referral card from the Business Agent.

The Court: From whom?

The Witness: From the Business Agent.

By Mr. Mullen:

Q. By "referral card," you mean telling him to join the local union?

A. We would have said that we were getting our carpenters through the Business Agent of Local Union 646, and we would tell him to go see the steward on the job. The steward would probably ask to see his book, whether his dues were paid up.

Q. In other words, if he was not a union member, you would not employ him?

A. No, not unless there were some very extraordinary circumstances where you couldn't get any men. If you want to deal with the local union, you might as well go whole hog.

Q. Don't you know that that was a violation of page 615 of the Kentucky law and of the Taft-Hartley Act, both?

A. I do not.

Q. It never has been brought to your attention that that was a violation of both of those?

Alexander Hamilton Bryan.

A. Under the provisions of our agreement with the Building Trades Council, that was what we were obligated to do.

Q. I am talking about your agreement with the local brotherhood entered into on the 14th of December, 1948.

Mr. Robertson: If Your Honor please, I have sat here now for an hour and 15 minutes. They have been questioning Mr. Bryan on questions of law, and Mr. Mullen is bound to know, just as well as Your Honor and I do, that it is for the Court to construe written instruments. I think it has gone far enough. I would like to get on with the facts of the case and let the Court work out the law.

Mr. Mullen: If Your Honor please, I don't think we have been asking him to construe any statutes. I asked if it had been brought to his attention that it was in violation of the law, of the Taft-Hartley Act, of the Kentucky law; and he said it had not been brought to his attention. I didn't ask him to construe the law.

Mr. Robertson: Then he asked him if he didn't know he was violating the Taft-Hartley Act and if he didn't know he was violating the Kentucky law. My limited knowledge is that on the facts of this case, he wasn't violating page 616 } either of them, so there can be a difference between us right here.

If you haven't asked him a question of law, I don't know what a question of law is. "Don't you know you have violated the Taft-Hartley Act?" Isn't that the question?

Mr. Mullen: I asked if it had been brought to his attention.

The Court: I think it is proper to ask him if it was brought to his attention.

Mr. Robertson: I don't object to that.

The Witness: It was brought to my attention that we were not in violation of any law.

By Mr. Mullen:

Q. If you employed a carpenter and the Paintsville Carpenters Local Union objected and said the person was not a member of their union, did you discharge him if they asked you to do so?

A. The question never came up.

Q. Would you have done it?

Mr. Robertson: If Your Honor please, that is getting right into the realm of speculation. You can get into all sorts of things.

Alexander Hamilton Bryan.

The Court: I will sustain that objection.

The Witness: We were trying our best to cooperate with the Paintsville Local.

The Court: I sustained the objection.

page 617 } The Witness: To try to have friendly relations.

Colonel Harris: Will Your Honor exclude that statement made after you had ruled?

The Court: Gentlemen, the statement made by Mr. Bryan after the Court sustained the objection should be disregarded by you.

By Mr. Mullen:

Q. What wage rate did your contract with the local union provide for?

A. The contract, with reference to wages, provides as follows:

"It is agreed that the following wage scale be established as the prevailing wages to be paid under this contract: The parties of the first part agree to pay wages in accordance with the scale asserted in this contract for all work performed by parties of the second part as follows: \$1.75 per hour for straight-time up to 8 hours' work performed in one day. Time and one-half per hour for all time worked over 8 hours in any one day. Time and one-half per hour for all time worked on Saturdays. Time and one-half per hour for all time worked on Sundays or holidays. Holidays shall include the following named days: New Years Day, 4th of July, Labor Day, Thanksgiving, Christmas Day."

Q. That is the sole wage scale contained in the contract, isn't it?

page 618 } A. Yes, sir.

Q. What did you pay your laborers?

A. Ninety cents an hour.

Q. So you wouldn't claim that they came under that contract?

A. Oh, no.

The agreement says it is also made subject to any laws, State or Federal, which may be applicable.

Mr. Mullen: There is no question, Your Honor. I object to that.

Alexander Hamilton Bryan.

The Court: I sustain the objection.

Mr. Robertson: I don't want to press the point, Your Honor, but in fairness to the witness, I think I ought to say that if Mr. Mullen picks out a sentence here and there in a legal instrument, in all fairness to the witness he should complete his answer.

The Court: Of course, when you take the witness back, you may ask him that question if you want to.

Mr. Mullen: He has read the complete paragraph about labor wages, and so stated himself, and then he volunteered something else.

Mr. Robertson: He hasn't read the modifying clause.

Mr. Mullen: It had nothing to do with it.

Mr. Robertson: That is what you say.

Mr. Mullen: Your saying it doesn't make it so.
page 619 { The Court: Let's move along, gentlemen.

By Mr. Mullen:

Q. The contract provided that it was for the duration: "This agreement shall be effective for the duration of this job from and after the date of this agreement, the job being work for Pend Creek Pocahontas Company in connection with a coal preparation plant at its No. 1 Kentucky Mine, Breathitt County, Kentucky."

A. That is right.

Q. That contemplated, then, that the only work you were to do under that contract was the preparation plant, according to its terms, did it not?

A. I construed that to mean work incidental to the construction of the coal preparation plant at the No. 1 mine, and would include the 25 houses, school house, and other work going on at the same time in that area.

Q. That is not what the contract said, though, is it?

A. It might have been worded a little better, but you wouldn't have one local union recognized as the bargaining agent for the employees on the coal preparation plant, and have another carpenters' local union or another union recognized on the same type of work on a school house a half mile away, going on at the same time. That just wouldn't work out.

Q. You were asked on direct examination:

"Did it ever come to your attention during the progress of the work that your laborers were contemplating a strike against Laburnum Company?"

Alexander Hamilton Bryan.

You stated "No."

"By Mr. Robertson:

"Q. I mean, did you ever hear anything about a strike until you heard his opening statement yesterday?"

That refers to Mr. Mullen's statement.

You answered: "This was the first time I heard it."

You didn't mean that, did you?

A. I certainly did. We never did have a strike.

Q. You never heard about a strike until I made my opening statement here?

A. I didn't call it a strike.

Q. You had the picket sign that you took down, didn't you?

A. Mr. Mullen, when the employees that are working for you are dissatisfied and quit work and go off, you have a strike; but when a bunch of hoodlums come and run them away, that is not a strike, and that is what happened to us.

Q. That is simply your statement of the case.

A. That is my idea, that we didn't have a strike and never did have a strike.

Q. And you never heard a strike mentioned until I spoke of it in my opening statement in this case?

A. The United Mine Workers called it a strike page 621 $\frac{1}{2}$ on one of their placards that they put up at the job, but it never was a strike at any time.

Q. The question asked you, though, was if you had ever heard of a strike until I mentioned it in my opening statement. I ask you if you really meant that?

A. I was assuming that it meant—of course, I have heard of a strike. We have had lots of strikes all over the country, but I was assuming that it referred to a strike in connection with our work.

Q. That is exactly what I am asking you.

A. We never had a strike in connection with the work, regardless of what anybody calls it.

Q. That is purely your opinion. Didn't you take down at least three picket signs saying "Strike"? Didn't the very first one say, "On Strike"?

A. My memory may be faulty, but I think that the first one said, "UMWA Picket Line—Contractor Laburnum." We didn't have any dealings with the UMWA.

Q. You are now claiming that you did have; that the UMWA was a party to this, aren't you?

A. I meant by that, that our employees were not members

Alexander Hamilton Bryan.

of the UMW. Not a single employee ever approached us making a complaint about anything. As a matter of fact, when some of them left, they had some very complimentary things to say. Not one sour note.

page 622 } Q. Those picket signs didn't mean to you, a strike?

A. No. It only meant one thing: that the Mine Workers and the United Construction Workers were just trying to break up our job, just like Mr. Hart said they were going to take over.

Q. You have testified throughout that they told you they were going to close down the work. Isn't that, in labor parlance, the same as a strike?

A. No. You can have a strike without closing down a job.

Mr. Mullen: May I see those exhibits, please, the picket signs that were torn down?

(Exhibits handed to Mr. Mullen.)

page 623 } By Mr. Mullen:

Q. The only use of a picket line is in connection with a strike, isn't it?

A. I don't know whether it is the only use. You generally associate a picket line with a strike.

Q. When you found the notices of a picket line at your work you didn't associate it with a strike?

A. Mr. Mullen: to repeat what I said a minute ago, regardless of what the United Mine Workers called it, as far as we knew our employees had made application to join the Salyersville Local. They had never protested to us, they had never complained there about it. The work went on in a proper manner until Mr. Hart led that big bunch of men out there and threatened and intimidated everybody and stopped the work. Just because Mr. Hart's crowd put up a sign saying there was a strike didn't make it a strike. Yes, I saw those, but I still don't think there was a strike. In fact, I say there wasn't a strike.

Q. You say you never heard of a strike. That was the question you were asked.

I show you this while I have it here. You took that down.

A. Yes, sir.

Q. It has been in your possession or in the possession of your company ever since?

Alexander Hamilton Bryan.

page 624 } A. Yes, I turned it over to Mr. Flippen and
he put it in the safe.

Q. There have been no changes made on the signs you took
down?

A. None at all.

(Referring to Plaintiff's Exhibit No. 25)

Q. And there is on it, is there not, an arrow connecting the
word carpenters with helpers?

A. It is just like it is here.

Q. It is there, isn't it?

A. Whoever wrote it said carpenters and then helpers and
laborers and then decided they wanted to make a little re-
vision.

Q. And put an arrow from carpenters to helpers to qual-
ify it?

A. That is right.

Q. You referred to Breathitt County as bloody Breathitt?

A. Yes, sir.

Q. Have you ever heard any other county out there called
bloody so and so?

A. Yes, bloody Harlan.

Q. Bloody Harlan. Doesn't that go back to the ancient
fend days when they got those names?

A. It is not so ancient. Those people out there have a
reputation of being ready to shoot you just as
page 625 } soon as they will look at you.

Mr. Robertson: Judge, I don't think I am going to ask for
a view.

The Court: Do you promise the Court you won't? It is a
long way to go.

Mr. Mullen: A view of the country?

Mr. Robertson: Yes.

Mr. Mullen: I went through Devil Anse Hatfield's yard
one morning at four o'clock in the morning before daybreak.
I didn't know whether I was going to be shot.

Mr. Robertson: I know you won't mind my telling you this.
I went up this hollow with Monroe Sublett to see somebody
up there last September and took the automobile just as far
as we could and it played out and we went on up the creek
bottom at night and we walked about two miles and every
time we would come to a light Monroe Sublett would holler,
"Taint nobody but Monroe Sublett!" (laughter).

Alexander Hamilton Bryan.

The Court: All right, gentlemen, let's proceed.

By Mr. Mullen:

Q. Mr. Bryan, on the 14th of July, did Mr. Hart phone you?

A. Yes, sir.

Q. Did he tell you that he represented the United Construction Workers and that they represented your common laborers?

page 626 } A. Mr. Hart said that he represented United Construction Workers in District 50. He didn't say that he represented our laborers. He said we were working in United Mine Worker territory and he was going to take over, that he was going to shut our job down just like he did the people in Wheelwright unless we recognized the United Construction Workers.

Q. Didn't he tell you specifically that he represented only the common laborers?

A. He definitely did not, because in connection with the original conversation with Mr. Hart I asked him about it, and he said that he was going to take over our work and represent all the employees, including the iron workers and the pipefitters and the electricians and the carpenters and everybody else.

Q. What did you tell him?

A. I told him that we had agreements with A. F. of L. unions, and it wouldn't work out, that I didn't see how we could do it. So he said that—I told him I would think about it. I didn't see how I could do it. I asked him to think about it and to let me hear from him again before he did anything. Mr. Hart said that he wasn't so much interested in the present work, but that he was thinking mainly about all the additional work which he understood we were going to do, that he was going to close down our job unless we page 627 } recognized them.

Q. You say that you asked him to let you hear from him before he did anything?

A. I certainly did.

Q. All right. Did he ask you to write him as promptly as possible what you would do?

A. No, I don't think he did. He asked me to get in touch with him again, and I asked him to get in touch with me again, and didn't either one of us get in touch with the other.

Q. As soon as you finished the conversation with him, what did you do?

Alexander Hamilton Bryan.

A. Called Mr. Delinger. I either called to Mr. Delinger or called Mr. Joinville. I think I called Mr. Delinger.

Q. You did that just as soon as you finished talking to him?

A. Yes, I did that right away.

Q. What did you tell them, whichever man you called?

A. If you are referring to Mr. Delinger, I asked him if he knew anything about United Construction Workers or District 50 trying to organize our workers. Mr. Delinger said he didn't know anything about it. So I told him about my conversation with Mr. Hart and asked him to watch the situation very closely and to keep me fully informed. That was on the 14th of July, which was a Thursday. I called Mr. Joinville and told him what Mr. Hart had said
page 628 }

he was going to do and asked him for suggestions. Mr. Joinville said that they would try to help us and suggested that I call Mr. Herbert Rivers, who was the Secretary-Treasurer of the Building Trades Department of the A. F. of L. in Washington. I called Mr. Rivers up.

Q. Did you ask Mr. Delinger if the laborers
page 629 }

were in any union?

A. I think I did.

Q. What did Mr. Delinger reply?

A. My recollection is that he didn't think they were in any union. I asked Mr. Delinger to take it up with the representatives of the Paintsville and Salyersville carpenter locals and see if he couldn't get them in one of those unions of carpenters helpers, and he took steps to do that.

* * * * *

Q. What did you instruct Mr. Delinger to do when you phoned him on July 14?

A. I asked him if he knew anything about the United Mine Workers, District 50, and the United Construction Workers organizing our workers, and he said he didn't. I asked him to keep in close touch with the situation and told him about Mr. Hart's conversation, that Mr. Hart had said he was going to organize all of our employees, including everybody. I inquired especially about the laborers. Mr. Delinger seemed uncertain about the laborers. So I asked him or suggested, rather, that he talk to the business agents of the two carpenter locals, the one in Salyersville, 697, and
page 630 }

the one in Paintsville, 646, and that he tell them about my conversation with Mr. Hart and see if arrangements couldn't be made for the laborers to be taken

Alexander Hamilton Bryan.

into one of those locals as carpenter helpers. I inquired about what happened at Wheelwright because Mr. Hart had referred to it, and received information about it.

Q. Mr. Bryan, did Mr. Delinger tell you that there had been contact between some of the organizers of the United Construction Workers and your common laborers?

A. He said he didn't know anything about it at all, that the first he heard about the United Construction Workers or any of those organizations was from me in my telephone conversation with him that day.

Q. Then you instructed him, you said, to take it up with one of the local unions to see if he couldn't get your laborers into the union as carpenters helpers.

A. That is right. He said he would do it.

Q. Then did Mr. Delinger report to you what he did?

A. That was on a Thursday. I will refer to my little book here. That was Thursday, July 14, and while I don't remember any specific calls to Mr. Delinger on Friday, I am almost positive I did talk to him, because I did talk to him practically daily. I think I talked to him again on Monday, the 18th. I think it was reported to me that some UCW representatives had been out to the job. On the 16th, which was page 631 } Saturday, Mr. Ragan, our chief clerk, mailed in to me an application blank form for membership in District 50 which one of our laborers had turned over to Mr. Ragan. On the night of the 18th I left for Kentucky on the train.

Q. Let's come back to July 14. Did Mr. Delinger report to you that he had talked to Monroe Sublett, President of the carpenter's union No. 646 at Paintsville, Kentucky, about the matter of having laborers taken into the Paintsville local as carpenter helpers?

A. I don't know whether he told it to me then or told it to me on the 18th, but thereabouts he told me that he had discussed it with a representative of the union.

Q. Did he tell you that Mr. Sublett thought that the general idea was good, but that the laborers would be taken into the Salyersville local union as carpenter's helpers?

A. I think he told me something to that effect. I can't remember the exact words. He told me that neither one of those business agents had the forms for these fellows to sign and that they were getting in touch with an international representative in Louisville. As soon as the forms came in, they were going to talk to the laborers about it.

Alexander Hamilton Bryan.

Q. Robert Poe was one of your carpenters at that time, wasn't he?

A. Yes, sir. Robert Poe had been working for us a good time, I think since around November 1948.

Q. Mr. Delinger reported to you he had also page 632 1 discussed it with Robert Poe?

A. I think he first talked to Mr. Sublett, and Mr. Sublett thought it would be better to have that part handled through the Salyersville local.

Q. Then did Mr. Poe agree to try to have the laborers taken into his local as carpenter helpers?

A. That was the general idea. He went out and was allowed time to go and talk to them.

Q. You were going to change the classification from laborers to carpenter helpers in order to get them in the union.

A. That is right, and maybe give them a wage rate increase.

Q. Neither local union 646 nor local union 697 had the necessary application forms to be signed, did they?

A. That is what I was told, Mr. Mullen. They came in later and they were signed.

Q. So then they phoned to Louisville and asked them to rush them out, didn't they?

A. That is right.

Q. You instructed that Mr. Poe be given time to get the laborers together and sign them up, didn't you?

A. I don't know that I gave instructions. Mr. Delinger told me that that is what he did. I had asked page 633 1 that arrangements be made to do it, and pursuant to that discussion that is what Mr. Delinger did.

Q. Mr. Poe was given time off, and he got these applications and got the laborers together and got them to sign up.

A. Robert Poe talked to the laborers. They said they would like to join his union. I am informed that Mr. Poe told them that if they joined his union, he would try to get them a wage increase to a dollar, which would be improved by Pond Creek Pocahontas Company.

Q. What chance did the laborers have of refusing to sign when you as the head of the Laburnum Corporation had instructed your superintendent out there to get them signed up? You had taken one of your workmen and given him time off and sent him with cards to get your laborers together and to say, "Here, the boss wants you to sign up." What chance did they have to refuse?

A. They had plenty of chance. They could have said they

Alexander Hamilton Bryan.

didn't want to join the union if they wanted to. They could have said they wanted to join another union.

Q. They were working there because they wanted a job, weren't they?

A. Most of them had been working there since November 1948. This was sometime in July, almost nine months, and there never had been any discussion, no trouble. Everything was going smoothly, as far as things could go on a job of that kind.

page 634 } Q. I am not asking you that question. I am asking you what chance was there that they would refuse when they were put on the spot by an employee of the company undertaking to say what union they must go in and presenting it to them at the direction of the boss of the job?

A. Nobody was being put on the spot at all.

Q. That is what you may call it.

A. They were being given—

Mr. Robertson: If that is what you call it, it doesn't make it so. That is what you said.

The Court: You gentlemen are even now.

Mr. Mullen: That is a matter of inference for the jury.

The Witness: Those laborers had sense enough to know that the United Construction Workers and the A. F. of L. people wouldn't work out very well together.

Colonel Harris: Your Honor, will you exclude that statement as not responsive to any question?

The Court: Gentlemen, I instruct you to disregard the last statement which was made by Mr. Bryan.

By Mr. Mullen:

Q. Those cards that were introduced here today were procured in that manner.

A. Robert Poe said he got them signed. That is what he told me. I asked him if I could have them.

page 635 } Q. He was your employee.

A. He had been working for me since November, 1948.

Q. So your company was undertaking to pick out the organization that these men must have.

A. Mr. Mullen, it is clearly indicated by our agreement with the Building Trades Council in Richmond exactly what labor organization we were lined up with. Everything that we had done had been more or less pursuant to that arrangement.

Q. These men were not organized before.

Alexander Hamilton Bryan.

A. We had talked to the business agent for the laborers over in Lexington, and it was recognized that it would be necessary to get local help. They are not skilled workers. They are not paid as much as skilled workers are. The business agent for the Lexington laborers local—we told him that 90 cents was the rate that we had, and we thought that would be proper. He said, well, that would be all right. I don't know, the man didn't come back, and it just stayed that way.

Q. But when you had that talk with Hart on the phone you immediately recognized, didn't you, that your laborers were not organized and they were open to organization.

A. As soon as I had that threat from Mr. Hart I knew that my job was in danger, and I knew that I had better take steps to see that everything was lined up, and that is page 636 } what I was trying to do.

Q. You went out to Kentucky on the 19th or 20th of July, didn't you?

A. I certainly did.

Q. Did you get in touch with Mr. Hart?

A. No, I didn't get in touch with Mr. Hart.

Q. You had asked Mr. Hart not to do anything until—

A. —he got in touch with me.

Q. —he had a further talk with you.

A. That is right.

Q. Did Mr. Hart have a right then to assume that you were not going to do anything to go behind his back during that period?

A. I don't think so. I told Mr. Hart in my conversation with him that we were lined up with the A. F. of L., that we had an agreement with the A. F. of L. unions, and I didn't see how we could make an agreement with his organization, and he knew that was what the score was. I asked him please not to do anything. He practically threatened to go over there and close my job down. It wasn't practically. He did threaten. He said he would do that, just like he did over in Wheelwright, where they took 300 men there and shut down a job.

Q. Yet you testified earlier you had never heard of a strike.

Wasn't that a strike right there?

page 637 } A. I was testifying about a strike in connection with our work. Everybody in the room has heard of a strike.

Q. Of course we are talking about hearing of a strike at your place of work, not all over the United States. You know that just as well as I do.

Supreme Court of Appeals of Virginia.

Alexander Hamilton Bryan.

So you don't think he had a right to assume that you wouldn't take steps to go behind his representation of the laborers when you asked him not to do anything until you talked again.

A. Mr. Hart never told me that he represented the laborers. He said we were working in Mine Worker territory and he was going to take over everybody.

Q. You knew your laborers were your danger point.

A. We knew that was a weak spot, sure.

Q. Weren't you following identically the same plan that you followed in Hopewell, which we have had in evidence here today?

A. I don't think I was, but if I was, was entirely within my rights to do it and was supposed to do it.

Q. Didn't you mislead them into thinking that you were going to talk with them about recognition when they called and asked you about it, when you put them off until a certain date?

A. I didn't mislead anybody. I told Mr. Hart I couldn't make an agreement with his organization.

Q. But you could make an agreement with his organization.

A. I couldn't make an agreement with his organization without breaking up my operations all over the country, and particularly in Breathitt County. It wouldn't have worked out.

Q. Didn't the people who followed you work with common laborers in the United Construction Workers and their skilled laborers in the American Federation of Labor?

A. I don't know. I have heard that they did.

Q. Yes.

A. On the other hand, down at Wheelwright the United Construction Workers came in there with about 300 men, led by Mr. Hart and Mr. Hunter and all that crowd, stopped the work of the iron workers, the carpenters, the painters, the laborers, the millwrights, everybody, and demanded that Beckett Construction Company, and Nelson Baldrige, Painter, and Link-Belt Company all recognize United Construction Workers, and got those fellows behind the eight-ball and they had to do it.

Q. You don't know anything about that if your own knowledge, do you?

A. I know what is reported to me. I have heard what was testified to in the depositions that have been taken.

Alexander Hamilton Bryan.

Q. The depositions are not in evidence here.

A. I know what Mr. Hunter testified when his page 639 } deposition was taken. He was questioned about it.

Q. You followed the identical same plan in Hopewell to block off the Construction Workers, who had a perfect right to organize your unorganized labor, and you followed the same thing in Kentucky. Instead of sitting down and talking with them to see if you could reach an agreement, you immediately set out to fight them, didn't you, and to block them?

A. United Construction Workers and the Mine Workers are outlaw organizations when you come down to it.

Mr. Mullen: I object to that, if Your Honor please.

Mr. Robertson: I think he has a right to say it, Your Honor. He asked for it, and he gave it to him.

The Witness: They can't get any—

Mr. Mullen: I refer to "outlaw."

Mr. Robertson: They *are* an outlaw organization. I state that. They are outlawed under the Taft-Hartley Act. I will talk a little law on that.

The Court: The judge will ask you not to argue the case, Mr. Bryan. Just answer the questions.

By Mr. Mullen:

Q. You went out to Kentucky on the 19th and you didn't communicate with Mr. Hart. Did you ask Mr. Delinger what had been done?

A. Mr. Mullen, I would just as soon negotiate page 640 } with Mr. Hart as I would negotiate with a robber that threatened to rob my house.

Q. You simply want to have your way as to who should represent your laborers. That is all it is, isn't it?

A. No, sir. I have tried to say repeatedly that we are lined up with the A. F. of L. There are some contractors who are lined up—

The Court: We have been over that.

The Witness: —with the United Construction Workers.

The Court: I don't think it is necessary to repeat that.

The Witness: I told Mr. Hart that in advance, and he said he was going to take over anyway. I asked him not to do it until he talked to me again, and he said he wouldn't.

Alexander Hamilton Bryan.

page 641 } By Mr. Mullen:

Q. Then you went right behind his back to get your men signed up that he was organizing.

A. I don't think I was going behind his back at all.

Q. You went out there on the 19th and you didn't go to see him. Did you communicate with him any more before the 26th?

A. No. I never heard from him, and he didn't hear from me.

Q. You didn't try to negotiate, didn't try to get a peaceful settlement of it.

A. There wasn't anything to negotiate about. I told him I couldn't do it.

Q. That is just your idea.

A. He said he didn't care, he was going to take it over.

Q. He told you he was going to take over the job?

A. Yes, sir; which is exactly what he finally did.

Q. Yet he was representing your laborers and simply trying to get them a better wage.

A. I don't think he represented my laborers. If he did, he might not have represented more than one or two out of 15 and 16.

Q. Don't you know he had them all signed up?

A. I don't know anything of the kind. You page 642 }

Q. have admitted that they never were in the union. Because you discharged them, wasn't that the reason?

A. I never discharged a soul.

Q. Didn't you put a qualification on there?

A. I never discharged a soul.

Q. That will be developed later that you did discharge them.

Mr. Robertson: Are you going to testify?

Mr. Mullen: Nothing like as much as you have testified if I do. If Your Honor please, we have reached the point now where we go into all the doings in Breathitt County. It is going to take quite a long while. It is now 4:30. I think if Your Honor could see fit to adjourn now, we could go on with it later.

Mr. Robertson: I was going to I think that is all right because they want it to go over until Monday anyway, you see, to keep Mr. Bryan on the stand.

Mr. Mullen: Wouldn't you want to go over until Monday?

Alexander Hamilton Bryan.

Mr. Robertson: Not if I were getting it like you are.

The Court: It is true, this case has gone one week, and I can't give you gentlemen any encouragement that it won't last another one. It is a lengthy case.

Mr. Robertson: I think it is going to run into page 643 } week after next as far as I can tell.

The Court: I have set aside three weeks for the trial. If you gentlemen have matters to take care of, you might make your plans accordingly.

Juror: I understand, Your Honor, you will hold Court until five o'clock. I feel that everything that we get over here is that much less on the other end.

Mr. Robertson: So do I, Your Honor.

The Court: Would you prefer—

Mr. Fred G. Pollard: Your Honor, I feel if we start in on this situation that comes next, we will have to review it Monday morning and will just have to go over it again, sir, to bring the connection together.

The Court: I think that the request of Mr. Mullen's is a reasonable one in view of the continuity of the situation. We are getting into Breathitt County, as I understand, Monday morning.

Mr. Robertson: I just want to say this, Judge. I am just as anxious to get through this case as anybody and I am just as willing to start as early as anybody else will and run just as late.

Mr. Allen: If Your Honor please, I would like to say that we will try to save time on our cross examination. We will try to cut them short and I think we can. I am not a long cross-examiner and don't believe in it. We will page 644 } save all the time we can on our cross examination.

The Court: I am sure you gentlemen will cooperate with the Court and with the jury, and so far as the Court has been able to ascertain counsel on both sides have cooperated with the Court. There have been many problems which the Court has had to pass on and some big questions that it has had to pass on, and it takes time. Mr. Mullen, did you have some further comment?

Mr. Mullen: Your Honor, if you please, we are going to finish the cross examination as rapidly as we can. They had him on the stand four days. We have had only a part of a day. We will certainly finish, I reckon, by midday Monday. We will try to do it. I think it would expedite finishing it by adjourning at this time.

Alexander Hamilton Bryan.

The Court: I am in accord with you—Mr. Harris?

Colonel Harris: Mr. Mullen said what I was going to say, that we had occupied only about five hours of the time of the Court, and the reason we have been here so long is because counsel for the plaintiff took so long in examining Mr. Bryan. I am extremely anxious to speed it up because I am away from home and I have got to stay away from home until this case is over. I can assure the Court and the jury that I want to get back with my wife and not leave her down there in a house by herself. If I can do anything to expedite it, I will certainly do it.

page 645 } The Court: The plan was not to hold Court on Saturday, and we are not going to hold Court tomorrow. One or two of the jurors planned to go away tomorrow. These gentlemen who are preparing the case work at night while you gentlemen go home. Counsel for both sides stay up late at night and get up very early in the morning to get ready for you the next day. Then there are times when we are not in the Courtroom when we are in the Chambers, which you have heard so much of, and I can assure you we are not playing. It is all work. I want to cooperate with the jury as much as I can, and I think have done so, but you can go but so fast and do justice. I am here to see that justice is done along with you gentlemen.

Mr. Allen: If it please your Honor, I did not mean to intimate that these gentlemen were conducting a lengthy cross examination at all. I am perfectly willing to concede that the principal witnesses for the Plaintiff require lengthy cross examination. I simply meant to say in view of what we know about the witnesses which they may put on, we do not think lengthy cross examination will be necessary and we will make it as short as possible.

The Court: I see. If possible, we will go along until about ten minutes to five next week. There are going to be times when we are going to have to adjourn, when it will be necessary, and you just can't keep on hearing evidence
page 646 } when questions arise. They have to be passed on. That is just the story.

Gentlemen, the Court is adjourned until ten o'clock Monday morning.

(Whereupon, at 4:35 p. m. the Court recessed until 10:00 o'clock a. m., Monday, January 29, 1951.)

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page 647 }

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Hearing in the above-entitled matter was resumed pursuant to recess, at 10:00 o'clock a. m., before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on January 29, 1951.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Francis V. Lowden, Jr., William A. Johnson, Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Colonel Crampton Harris, Counsel for Defendants.

Also Present: Robert N. Pollard, Jr.

page 648 }

PROCEEDINGS.

(The following proceedings were had in Chambers:)

Colonel Harris: If the Court pleases, we have a motion for mistrial, a motion to discharge the jury and declare a mistrial, and I want to sign the certificate that I served counsel and ask that it be marked filed, and we would like to argue it, if the Court please.

Mr. Fred Pollard is somewhat sick and I think he may not be here.

(Discussion off the record.)

Mr. Mullen: Before we take that up, there is another matter we would like to take up. Mr. Holt, the CPA that we employed, was not given access to what the Court said he should have. We are in great difficulty now. We can't always get CPA's here. We got him for Friday, Saturday and Sunday. They wouldn't let him start on Friday. You remember, we had him up here and asked that he start. On Saturday they wanted to give him photostatic copies of portions and not what Your Honor had ordered him to have.

The reason I bring it up first is because Mr. Holt was taken off another job. The people he was working for did not like it. He has to go back on that now, and it will be toward the end of the week again before we can get him. We want to let

him know. We asked him to appear up here this morning, and he may be out there, I don't know.

page 649 } Mr. Robertson: If Your Honor please, I ask that they have Mr. Holt here to speak for himself and that the Court question him.

The Court: I understand he is coming.

(Off the record.)

The Bailiff: Mr. Holt doesn't answer, Your Honor.

The Court: All right.

Shall we proceed without Mr. Holt?

Mr. Robertson: I have a matter that I want to take up first, Your Honor.

The Court: We will pass that by, then, for a few moments.

Colonel Harris: Unless they have some matter of priority, I should think this would come up first.

The Court: The motion for a mistrial would be first, I imagine.

Mr. Robertson: All right.

Colonel Harris: Shall I wait until Your Honor reads it?

The Court: I haven't read it. This is the first I heard of it.

(Court reading document.)

Mr. Mullen: Here is Mr. Holt.

(Mr. Holt entered the room.)

Mr. Robertson: I suggest that Mr. Holt be page 650 } sworn and the Court ask him whatever he wants.

The Court: Will you raise your right hand, Mr. Holt. Do you solemnly swear the evidence you will give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Holt: I do.

Whereupon,

C. HOWARD HOLT,

called as a witness on behalf of Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mullen:

Q. Mr. Holt, will you state what happened when you sought the information that you asked for to review and report on?

A. I went over to the office of the Laburnum Construction Company Saturday morning, and I was under the impression I would have access to the audit reports, but the only thing they submitted to me was photostatic copies of certain portions of the report, and that information, which I have with me, shows the contract price, the cost of the work on the job, and the gross profit or loss by job for the years 1947, 1948, and 1949, I believe, and 1946 is in here, too. I was seeking information on some particular jobs applying to the exhibit that was submitted, and that was to establish the net profit for the job, but this information doesn't give that.

page 651 } The Court: Just what do you want now, Mr. Holt?

The Witness: I think I would have to see the complete audit report before I could verify—

Mr. Allen: What was that? I didn't catch that.

The Witness: The complete audit report before I could verify any of the information that we would like to have.

Mr. Robertson: Are you through?

The Witness: Yes.

Mr. Robertson: If Your Honor please, I would like you to hear Mr. Bryan as to what he did, and if there is any misunderstanding to clear it up. Mr. Bryan, you are under oath, too.

Mr. Bryan: As soon as the Court ruled the other day that we were to make available data on these jobs amounting to some \$20 million, about which we testified, I asked our counsel and auditors to get together all books back beginning with 1941. That was done, and they were there available for Mr. Holt when he came to the office on Saturday morning. In an effort to make things easier, we also prepared a statement based on the information shown in the audit reports of Leach, Calkins & Scott, listing in detail every job on which we had performed work from January 1, 1941, to December 31, 1950.

Supreme Court of Appeals of Virginia.

C. Howard Holt.

showing the gross income on each job, the direct page 652 } job costs, and the profit or loss on each job. Mr. Holt saw the work papers which we had prepared and which were being typed at that time.

We told Mr. Holt that any information shown on the statement, we would try to help him to verify from the books. We had representatives of Leach, Calkins & Scott there. In addition to that, we had photostatic copies made of the portions of the Leach, Calkins & Scott audit reports which showed this detailed information by job. They were all turned over to Mr. Holt, and it wasn't just for 1947 and '48, but it was from 1941 down to date. If Mr. Holt didn't get them, it was a mistake, because I understood that they had been turned over to him.

The statement that we were preparing and which Mr. Holt didn't have because it was being typed while he was in the office, I have here in my hand this morning (producing document), and shows the information. It is a 21-page report, showing total work amounting to over \$24 million in total and net job profits of \$822,095.33. We called Mr. Holt Saturday afternoon to find out if he was coming back to get any more information, if it was necessary for us to keep people there to help him, either that afternoon or on Sunday, and Mr. Holt said he had all the information that he needed. Mr. Holt did call for general overhead costs, main office operating expenses.

We said we didn't understand that we had to page 653 } furnish that, that what Mr. Mullen and Colonel Harris and Fred Pollard wanted was information about this \$20 million worth of work to show whether or not we had made a loss on those jobs. That is what we furnished.

Frankly, it is detailed information that we have always regarded as strictly private, and it is rather embarrassing to make it available. Some of the people that we have been doing business with, we have lost money on some jobs as every contractor does, and we have made money on some jobs, but this shows the exact amount to the penny. It is in balance with the books. We have here today a representative of Leach, Calkins and Scott who assisted in the compilation of this. I am ready to make oath to it that we have our general Comptroller, Mr. Williams, available, and he is willing to make oath to it. We believe this is the information they have asked for. If they are not satisfied with it, if they want to check any figure on here, we will be glad to assist anybody at any time.

In addition to that, I might add that with reference to the

C. Howard Holt.

work in Kentucky and West Virginia Mr. Holt made a detailed examination of that information which we have put in, that is the jobs showing a net profit aggregating approximately \$58,000 over a 28-month period. That is the work at Pond Creek and Island Creek Coal companies and its subsidiaries and affiliates. Mr. Holt found a 10-cent mistake.

page 654 } I would like to add at this time that the figures shown on that exhibit which has been offered in evidence showing net profits of approximately \$58,000 represents the combined net profits and losses per job of Laburnum and its subsidiary, Virginia Mechanical Corporation. That was explained to Mr. Holt. He checked that information not only from the audits, but I understand from the books themselves. That took up the major portion of the time during the morning on Saturday. I told Mr. Holt I was sure that Mr. Pollard and Mr. Mullen and Colonel Harris would want that done because some question had been raised about it, and we were there to help him, and that is what we have done.

Mr. Mullen: The catch there is the use of the words "net job profits." We want the net profits. The net job profits are a different thing. They have used big figures, and have left the jury under the impression they made \$58,000 on these jobs when they didn't do it because they have not allocated to it the proper proportions of overhead, and so forth. We think that as long as they have put in there, as we have stated, \$20 million and they claim that \$58,000 was made on jobs, and they claim that they have done some \$650,000-odd of work over a certain period, we are entitled to see the books, to see the audit, and not to have them make up statements for us and say "Here is what you can have." We are entitled to see the original documents.

page 655 } Mr. Robertson: If Your Honor please, I think it is perfectly obvious that what they want is not relevant here, for this reason: Of course, the net job profit that they got out of it, if they hadn't made it, they would have been that much worse off. As I understand it—and the accountants here can testify on this, and I might say I don't think there is anybody in this room other than the accountant who is really qualified to speak with any authority on this matter—but as I understand it on each job the proper overhead in the form of salaries and expenses of people working on that job is charged as an item of expense to that job. That is all separate and distinct from the general office overhead. I think I am correct when I say that according to sound

C. Howard Holt.

principles of accounting it is just ABC as to how much percentage of general office overhead could be charged out in to operations such as this. They can argue from it anything they want, 10 per cent, 20 per cent, 30 per cent, 50 per cent. It is a matter of sound accounting principle as to what that amount would be. I don't know, and I doubt very much that anybody here knows. I think anybody from Mr. Leache's office who knew the set-up of this company could say.

Mr. Allen: If Your Honor please, I would like to say, what they are really complaining about is the failure of Mr. Bryan's books to show an allocation or the failure of this page 656 } statement to show an allocation of the general office overhead. That is an impossibility. Mr. Bryan, according to my information has made no allocation on the books, and it would be utterly impossible for him to say how much of the general overhead should be allocated to any specific job.

He doesn't ask them to accept the statement which he has made. He has opened the books wide. They can go there and check every job that they want to check to see if these figures are correct.

Mr. Bryan in this statement has covered a 10-year period. Every job that he has done during that period is put down, the gross income for the job, and the costs of the job and the profit or loss on that particular job. That is all the way through. It winds up and shows the gross business to be some \$4 million more than he testified to, and it shows what his net profits on the whole were. It is not but an addition of the profits and a subtraction of the losses on the particular jobs.

The only thing left out is the allocation of the general overhead to the particular jobs. As we understand, under your ruling we are not required to go into that, and if we were, I just don't see how it could be done. They can make any allocation they want, by the size of the job, and argue anything they want from it.

page 657 } The Court: All right.

Mr. Mullen: Mr. Holt, have they furnished such information as we asked you to get for us?

The Witness: No, sir.

The Court: That statement which has just been presented to will suffice?

The Witness: This is the same type of statement, Your Honor, that applies to the exhibits which were submitted,

C. Howard Holt.

which shows the gross income for the job and direct costs and general, the job profit and loss. I was asked to get the net profit per job. In other words, the general office expenses would have to be allocated in some manner to the particular jobs in question for that period in order to arrive at the net profit per job.

The Court: Just what is it now that you want to see, the audit reports of each job?

The Witness: The audit report for each—I would have to see the audit report showing the general office and overhead expenses. In other words, I have it down to the gross profit per job. From that we would have to deduct the additional expenses involved in arriving at the net profit.

The Court: Will the audit report show that?

The Witness: It should, yes.

The Court: You would like to see the audit report?

Mr. Robertson: I would like you to hear Mr. Bryan on one more thing before you rule on it.

The Court: All right.

Mr. Bryan: Mr. Holt came in on Saturday, and he said that he had instructions to find out what our general net profit was before taxes and what our profit was after taxes. I told Mr. Holt that Your Honor had ruled that we were not to make available the tax returns, that I understood that Mr. Mullen and Mr. Harris were interested in the \$20 million figure that we mentioned and whether or not we had made or lost money on those jobs. The way our books have been kept and maintained—and I think the same applies generally to all construction companies—we have of course a gross income on each job, we have the direct job costs. Those direct job costs include the cost of all labor on the job, that is, the money we paid the carpenters, laborers, iron workers, and the resident staff people. It also includes the job overhead, which is the cost of the superintendent's salary, if the job is big enough and you have a field clerk, it would include his salary. It also includes the cost of your insurance, workmen's compensation insurance applicable to the job, the cost of payroll taxes, the cost of any bonus that you pay subcontractors. It includes the cost of all rentals. All direct expenses and costs in connection with the job. You deduct the total costs from the total gross income on the job and you get your job profit or
page 659 } loss.

In addition to those expenses and in operating a construction business you are bound to have certain general

C. Howard Holt.

operating expenses. No attempt is made to allocate those expenses to the job. In most cases, especially in the case of large jobs, they are not just completed on a calendar year basis, but they extend from one year to another. The information which we gave to Mr. Holt is the same as the information which is shown on the statement which we just handed to you, except that the information on the statement which I just handed to you, is compiled in a little different form. In order to see whether or not we made a loss or profit on the job, it was necessary to take the figures for probably a couple of years, two or three years and compile them together. That has been done very carefully and accurately and the figures submitted are in balance with the books. There is no way I know that a person can intelligently allocate portions of the main office operating expenses to the jobs. There are all sorts of figures which might come into it. Mr. Holt might have one idea as to how it is to be done. Mr. Leach might have another *ide* as to how it is to be done. Mr. Durham might have another idea as to how it is to be done. We might have still another. Actually speaking, that was not done. The company tries to keep its overhead costs down as low as it can ordinarily, but whether it was large or small, page 660 { it seems to me that that is beside the *oint*. The main point is whether or not we made or lost money on our jobs that we had. That is where we got the revenue from which to run the business.

Mr. Mullen: It is allocated on a percentage basis.

The Court: I think Mr. Holt is entitled to that information, gentlemen. I will ask that you make it available for him.

Mr. Robertson: We save the point, Your Honor.

Mr. Allen: You mean the general overhead expenses?

The Court: Yes. I think he is entitled to see the books, any books that have anything to do with your profit or loss. One auditor may determine whether the loss is computed one way or the profit is computed one way, and another auditor may determine it another way. That is a question of argument. But I think he is entitled to see the books.

The Witness: Thank you, sir.

The Court: Do you want me to deliver this statement you just tendered to the Court to Mr. Holt, Mr. Bryan?

Mr. Bryan: I have no objection to that.

The Court: Would you like to have it? Do you think it would be helpful?

The Witness: It probably would be helpful.

C. Howard Holt.

Mr. Robertson: It can't hurt us.

Mr. Bryan: I make only one request in that connection. I know this is going into the Court page 661 } now and it is to be made a public record, but it does contain information that normally is considered to be private and confidential, and it would be embarrassing to me and embarrassing to a lot of other people to have some of that information bandied around.

Mr. Robertson: It is the same thing I said about financial transactions.

The Court: If they mention anything in the proceedings about that, I give you the same opportunity.

Mr. Bryan: I can't help it, but I just ask that cooperation.

The Court: All right, gentlemen.

The next on the agenda is the motion for mistrial.

Mr. Allen: May we read it through first?

Colonel Harris: Whichever you like.

The Court: I think it might save time of Colonel Harris read it.

Colonel Harris: If I read it.

The Court: Yes.

Colonel Harris: "Now come the defendants separately and severally and jointly and move the court to discharge the jury and to declare a mistrial in this cause, and for grounds of this motion assign the following separately and severally:

(1) Counsel for the plaintiff has engaged in highly prejudicial, inflammatory, poisonous and false argument to the jury injected for the purpose of prejudicing the jury and piling up punitive damages as part of the verdict sought by the plaintiff.

"On Friday, January 26, 1951, near the conclusion of these proceedings, counsel for plaintiff used this language in the presence and hearing of the jury:

" 'They (referring to the defendants, United Construction Workers and the Mine Workers) are an outlaw organization. I state that. They are outlawed under the Taft-Hartley Act. I will talk a little law on that.'

"(2) Immediately preceding the utterance of counsel for the plaintiff, made the basis of Ground No. (1), Counsel for

C. Howard Holt.

plaintiff made the following statement in the presence and hearing of the jury:

“ ‘I think he has a right to say it, Your Honor, He (referring to Mr. Mullen, Counsel for Defendants) asked for it, and he (the witness, A. Hamilton Bryan) gave it to him.’ ”

“(3) At or near the close of the day's proceedings in this case on January 26, 1951, the question of adjournment to Monday, January 29, 1951, was under consideration. Counsel for the plaintiff used the following language in the presence of and in the hearing of the jury:

“ ‘I was going to say that I think that is all right because they want it to go over until Monday anyway, you page 663 } see, to keep Mr. Bryan on the stand.’ ”

“And further in reply to Mr. Mullen's question as to whether plaintiff's counsel would want it to go over, plaintiff's counsel replied:

“ ‘Not if I were getting it like you are.’ ”

“Defendants separately and severally and jointly assign as additional grounds for this motion to discharge the jury and declare a mistrial the statements made by A. Hamilton Bryan, witness for the plaintiff, and President of plaintiff corporation, while on the witness stand testifying as a witness as follows, to-wit:

“(4) In response to the following question by Counsel for defendants:

“ ‘Q. You followed the identical same plan in Hopewell to block off the Construction Workers, who had a perfect right to organize your unorganized labor, and you followed the same thing in Kentucky. Instead of sitting down and talking with them to see if you could reach an agreement, you immediately set out to fight them, didn't you, and to block them?’ ”

“The witness, A. Hamilton Bryan, made answer:

“ ‘A. United Construction Workers and the Mine Workers are outlaw organizations when you come down to it.’ ”

“And to this statement of the witness, Counsel for the

C. Howard Holt.

defendants then and there in open court in the
page 664 } presence and hearing of the jury stated:

“ ‘I object to that, if Your Honor please.’

“ (5) Defendants charge that the statement of the witness, A. Hamilton Bryan just quoted in the preceding ground hereof, was not responsive to the question asked him, was entirely voluntary, was highly inflammatory and prejudicial, was for the purpose of injecting poison and prejudice against the defendants in this cause, and that said statement was false and also injected for the purpose of wrongfully and illegally prejudicing the jury against the defendants and piling up a verdict for punitive damages.

“ (6) The witness, A. Hamilton Bryan, President of the plaintiff, and while testifying as a witness for the plaintiff, was asked by Counsel for the defendants the following question:

“ ‘You went out to Kentucky on the 19th, and you didn’t communicate with Mr. Hart. Did you ask Mr. Delinger what had been done?’

“ And to said question the aforesaid witness, A. Hamilton Bryan, made answer as follows:

“ ‘Mr. Mullen, I would just as soon negotiate with Mr. Hart (referring to Mr. Hart, the District Representative of United Construction Workers affiliated with United Mine Workers of America and District Representative of District 50, United Mine Workers of America) as I would negotiate
page 665 } with a robber that threatened to rob my house.’

“ And defendants do herewith and hereby charge that the quotation just made was not in response to any question by Counsel for defendants, was highly prejudicial, poisonous and inflammatory, and was injected for the purpose of piling up a verdict for punitive damages against these defendants.

“ (7) Defendants charge and represent to this Court that the foregoing remarks of both Counsel for plaintiff and of the witness, A. Hamilton Bryan, are each of such highly prejudicial, poisonous and inflammatory nature that the poison and prejudice injected in this cause thereby cannot be removed by any direction or instruction of this Honorable Court, and the only way these defendants can obtain justice

C. Howard Holt.

and a fair and impartial trial is for this Court to order the jury discharged and to declare a mistrial in this cause.

“(8) Defendants allege that the conduct hereinabove set forth, as a basis of grounds (1) through (7) inclusive, occurred near the close of the proceeding on January 26, 1951, and were cumulative of a course of conduct which had been indulged in by Counsel for plaintiff and by the witness, A. Hamilton Bryan, from the beginning of the testimony of the witness up to and including the occurrences hereinabove listed, said prior statements and testimony being as follows, to-wit:

“When Counsel for defendants asked the witness, A. Hamilton Bryan, the following question:

“‘Q. You were not told it was because of any of the difficulties you had already had there, were you?’

“He made answer as follows:

“‘A. No, we were not given any reason. We, frankly, conditioned the bid in certain ways that I think were objectionable to Pond Creek. For one thing, we said that we expected them to keep those roads in passable condition so we could get in and out, and I don't think they *linked* that vedy much.

“‘For the second thing, we asked that they provide builder's risk insurance with extended coverage, which would protect the buildings against loss or destruction from malicious mischief or acts of vandalism. That was put in there purposely in order to get some protection in case the United Construction Workers and that crowd should come in there and burn the building down.’

“(9) During the examination of the witness, A. Hamilton Bryan, President of the Plaintiff, by Mr. Archie G. Robertson, Attorney for the Plaintiff, on January 23, 1951, the aforesaid attorney made the following statement in the presence and hearing of the jury:

“‘We are suing here in all earnestness and good faith for the biggest lawsuit that I personally have ever been in.’

page 667 } “And the defendants allege that the aforesaid statement of counsel was wholly without any evidence in the cause to justify this statement.

C. Howard Holt.

“(10) During the direct examination of the witness, A. Hamilton Bryan, President of the Plaintiff corporation, by Mr. Archie G. Robertson, Counsel for Plaintiff, a colloquy arose when defendants’ counsel made objection as follows:

“Colonel Harris: We object to the witness reading from a document. I notice he keeps looking at the document and then turning the pages.”

“During the aforesaid colloquy Mr. Robertson, the aforesaid counsel for Plaintiff in the presence and hearing of the jury made the following statement:

“It seems to me, Your Honor, that the real purpose of my friend here is to break in on this story and destroy the effectiveness of the testimony.”

“And the defendant alleges that the purpose imputed to counsel for defendant was not the real purpose of counsel and the statement so made was false and highly prejudicial.

“(11) During the direct examination of the witness, A. Hamilton Bryan, President of the Plaintiff, by Counsel for Plaintiff, on January 24, 1951, counsel for defendant made the following objection:

“Mr. Mullen: If Your Honor please, if the only part relevant is the telephone number, it is improper page 668 $\frac{1}{2}$ to put in a whole newspaper in evidence in the record.”

“Whereupon, Mr. Robertson, Counsel for Plaintiff, in the presence and hearing of the jury made the following statement:

“Mr. Robertson: If Your Honor please, I brought it here—of course, if I had brought one sheet they would have said that looked mighty fishy.”

“(12) During the course of the direct examination of the witness A. Hamilton Bryan, President of the Plaintiff, Counsel, Mr. Fred G. Pollard, objected to a question by counsel for Plaintiff, which objection the court then and there overruled. Whereupon, the following occurred:

C. Howard Holt.

“ ‘Mr. Robertson: You ought to go to night school, Freddie.’

“ ‘Mr. Mullen: We object to a remark like that. We are trying to facilitate the case.

“ ‘The Court: The jury will disregard sidebar remarks.’

“ ‘And the defendant alleges that the personal remark about Mr. Fred Pollard, one of the defendants’ counsel, was highly prejudicial and was made for the purpose of intimating to the jury any further statement or argument made in their presence and hearing by Mr. Fred Pollard was not worthy of belief or consideration by them because he was an ignorant lawyer and needed to go to night school.

page 669 } “ ‘And defendant further alleges that the remark was false and unjustified for the reason that Honorable Fred Pollard has already gone to Law School and received his LL.B. degree from the Law School of the University of Virginia during the year 1942, and defendants further allege that said Law School has a high reputation not only in the State of Virginia, but among educated and experienced lawyers throughout the boundaries of the United States.

“(13) During the course of the cross examination of the witness, A. Hamilton Bryan, by Mr. Mullen, Attorney for the defendants, he asked the witness the following question:

“ ‘Q. By “lay off”, he meant recognition of the A. F. of L. by UCW?’

“ ‘A. I don’t see what you could say about that, because United Construction Workers certainly didn’t recognize the A. F. of L. at Wheelright when they went there with 200 or 300 men and broke up a job.’

“ ‘And defendants allege that the quoted answer was made in order to arouse prejudice against the defendants, and particularly against United Construction Workers, and was the gratuitous introduction of a transaction which was not a part of the transactions complained of by the Plaintiff in its Notice of Motion for Judgment.

“(14) During the course of the cross examination of the witness, A. Hamilton Bryan, President of the Plaintiff, said witness disregarded the rulings of the Court, for instance, Counsel for the plaintiff

C. Howard Holt.

objected to a question by Mr. Mullen whereupon the following proceedings were had:

“Q. Would you have done it?

“Mr. Robertson: If Your Honor please, that is getting right into the realm of speculation. You can get into all sorts of things.

“The Court: I will sustain the objection.

“The Witness: We were trying our best to cooperate with the Paintsville Local.

“The Court: I sustained the objection.

“The Witness: To try to have friendly relations.

“Colonel Harris: Will Your Honor exclude that statement made after you had ruled?

“The Court: Gentlemen, the statement made by Mr. Bryan after the court sustained the objection should be disregarded by you.”

“(15) During the course of the cross examination of the witness, A. Hamilton Bryan, President of the Plaintiff, the following proceedings were had:

“Q. They were working there because they wanted a job, weren't they?

“A. Most of them had been working there since November, 1948. This was some time in July, almost nine months, and there never had been any discussion, no
page 671 } trouble. Everything was going smoothly, as far
as things could go on a job of that kind.

“Q. I am not asking you that question. I am asking you what chance was there that they would refuse when they were put on the spot by an employee of the company undertaking to say what union they must go in and presenting it to them at the direction of the boss of the job?

“A. Nobody was being put on the spot at all.

“Q. That is what you may call it.

“A. They were being given—

“Mr. Robertson: If that is what you call it, it doesn't make it so. That is what you said.

“The Court: You gentlemen are even now.

“Mr. Mullen: That is a matter of inference for the jury.”

“The Witness: Those laborers had sense enough to

C. Howard Holt,

know that the United Construction Workers and the A. F. of L. people wouldn't work out very well together.

"Colonel Harris: Your Honor, will you exelude that statement as not responsive to any question?

"The Court: Gentlemen, I instruct you to disregard the last statement which was made by Mr. Bryan.' "

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page 684 }

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Mr. Robertson: They have made personal remarks about me, Your Honor, and I will address myself right to the heart of this situation as I see it.

Referring first to Mr. Harris, I say with all truthfulness that I never heard such a jury harrangue under the guise of a legal argument. It looks to me like his dramatics and theatricals are trying to influence this court. It looks to me, the way they come here with some sort of
page 685 } affidavit or some sort of motion after every recess of this Court, and come here and kill more than an hour this morning, that they are trying to stall this trial.

If Your Honor please, Your Honor knows the Virginia decisions, and so do I. What have they done? Your Honor knows the spirit that has pervaded this trial as to whether it is anything of willful defiance of the rulings of the Court, or trying to evade the rulings of the Court, or trying to circumvent the rulings of the Court. Your Honor can look at the attitude in this jury in this trial as von sit there, and look at them and notice their reactions to different phases of the trial, and their good humor and good spirit, and see whether or not they have been influenced by any prejudice or passion against anybody.

What have they done? It reminds me of a case that I had, the Cornell case before Judge Lamb. They said it took Billy Cornell 6 months to make up his own mind whether or not he had been defrauded by the actions of his wife, and if it took him 6 months to make up his mind, how could they ask a court to believe that the testimony was clear and cogent.

What have these gentlemen done? It has taken them a week-end to do it. It has taken a conference between the four of them to do it. It has taken them to search this rec-

C. Howard Holt.

ord as it is evident they have done, to do it. It page 686 } has taken them, coming down to what is fair and square, they have lifted isolated statements out of their context. They have misconstrued the tone in which they were uttered. They have injected a venomous and wicked misconstruction of the meaning of words in here in an attempt to get a mistrial, because, as I have said from the outset of this thing, all they want is to get away from a trial on the merits by any means they can.

Mr. Mullen: I object to that.

Mr. Robertson: I don't care whether you object to it or not. You have said some very mean things about me.

The Court: Gentlemen, let's be calm and proceed.

Mr. Robertson: It has taken them over a week to search and gimlet-eye this record to try to find something that they think they can take offense at. They are bringing up everything here that Your Honor would expect to be brought up in argument of instructions, in argument to a jury, in argument upon a motion to set aside a verdict, in argument upon an appeal of any case which any lawyer loses; and they haven't lost it yet.

I submit that when Mr. Bryan was asked as to why he had to put those provisions in that proposal about the protection of the property while it was under construction, one of the reasons he did that was that it was his duty to tell the whole story if he was going to tell any part of it. It is page 687 } utterly different from where you are suing somebody in a personal insurance suit, and they won't let you mention the insurance company because they can't get a fair run for their money if you do. No insurance company is involved anywhere in this case.

By what authority does Mr. Harris step out here and talk to Your Honor about people who have accumulated property sitting on that jury? What does he know about it? By what warrant does he, an experienced lawyer who won the Jewel Coal Mine case, and with the association he has had in the practice of law, by what authority does he come here and make any such statement as that?

I think I know the Virginia decisions. I think I know the rights of counsel here. I don't expect them to like our testimony. I don't expect them to like what we say. We have a whole lot more coming, and they are not going to like that, either.

As the Court has said here, the Court has time and again

C. Howard Holt.

said that it appreciates the spirit that counsel have shown in this case in trying to cooperate with the Court. I think the Court can search back through its own memory and see whether anything has been done here by counsel for this Plaintiff that warrants any such attempt as is being made here to sidestep a trial on the merits.

When they single out and lift from their con- page 688 } text and twist and distort and misconstrue what

I have said in the spirit in which I have said it, they don't quote one single thing that called for those remarks, what was said to counsel over here, what was said by Mr. Mullen to me, what was said by Mr. Harris to me.

They ask the Court on any such thing as they have brought forward here, to declare a mistrial without even reading the record in the case, which they have studied meticulously over the week-end to resurrect what they have brought forward here and stated.

It took four counsel a week-end to think up these things.

My remark that Mr. Mullen has gotten himself wrought up over, after 48 hours, was made in response to a question that he asked me. I said it, and I think I was right, and I still think so, that they wanted to keep Mr. Bryan on the stand today. They have killed over an hour here this morning.

He turned to me and said, "Wouldn't you want to do it?" I replied, "Not if I were getting it like you are."

If Your Honor please, I say they are not entitled to a new trial, and if the Court grants any new trial here it would just be a laughing stock everywhere for anybody who knows about this case; just another case where you couldn't get the United Mine Workers before the court and page 689 } hold them there. I think the motion should be overruled.

I am going to ask Mr. Allen to address himself to it.

Mr. Allen: If Your Honor please, let us get entirely out of the atmosphere that naturally and sometimes inevitably there is generated in a controversy of this kind, and let us see where we are legally.

Some years ago, I had occasion to take a case to the Court of Appeals on the very question involved here. I was then on the same side that my friend, Colonel Harris, is on now. I was complaining of a remark that Mr. Buford made in the course of the trial, whom Your Honor knows was one of our outstanding lawyers in Virginia. I looked up all the authori-

C. Howard Holt.

ties and went to the Court of Appeals. I got a reversal of the case on that ground, and that ground alone.

The remark there was—I will have to go back just a little bit to give you the setting of the case so you will understand. There was involved in the case a widower and a widow whom he had employed as a housekeeper. None of their conduct between themselves was involved, and Mr. Buford makes the statement before the jury that when a widower and a widow were in the same household or under the same roof, indicating that something improper might have happened. There was no foundation in the evidence for it, none whatsoever. It was brought, not purposely, I don't think, by Mr. Buford, but anyway the remark was made, and I contended that it influenced the jury and that there was no foundation for it, and the Court of Appeals reversed the case on that ground, and went into all the authorities.

That was about 20 years ago. Since that time I have had occasion in a number of cases to look up the authorities on the same question. The courts since that case have gotten very much more liberal. They are coming around to this viewpoint: They are judging each case on the particular facts in that case, and they are judging the remarks made by virtue of what preceded or what occasioned the remarks. They reach this conclusion: that it is to be inevitably expected that in the heat of the trial of a case, remarks are going to be made, and I would say certainly 9 times out of 10 they say and hold that the instructions of the judge to disregard the remarks will be sufficient; that if you declare a mistrial for all these remarks that may be held to be improper in the course of the heat of a trial, you will never get to the end of the case.

Coming to the remarks that they complain about most seriously and the one about the robbers and the one about burning down the house, you will remember that when Mr. Bryan said that he would just as soon negotiate with a robber as to negotiate with the United Construction Workers, Mr. Mullen was asking him why he wouldn't negotiate with the United Construction Workers. All the authorities on cross examination say that if a lawyer on cross examination asks a witness a question of why, the witness can answer anything that shows his reason why he did a thing. Mr. Bryan said that from his experiences with the United Construction Workers and what he knew about the United Construction Workers, he just couldn't ne-

C. Howard Holt.

gotiate with them. He would just as soon try to negotiate with a robber.

That was answering the question that Mr. Mullen asked. If Mr. Mullen didn't want the real answer that was in the brain of Mr. Bryan, he shouldn't have asked the question "Why?"

The same thing applies to the question about burning the house down or burning the property down. That wasn't all the answer. Mr. Mullen was asking Mr. Bryan why; if he didn't know why he didn't get those bids, and he was trying to tell Mr. Mullen why he didn't get them. He said maybe one reason was that the roads were so bad that there had to be roads in there, and that was one of the requirements. Another reason was that after his experience there, he insisted on putting in the contract a provision for carrying insurance against arson and vandalism; that he didn't know what these people would do.

That was perfectly responsive to Mr. Mullen's question. Mr. Mullen had risked the question "Why," and all the authorities say when you risk that question "Why," page 692 } you take your chances on the answer. A man may answer out of his imagination, and there is nothing under the law of evidence that you can do about it.

Another case in Virginia in which this question arose about improper argument—and these things come up so often that I have made a practice of carrying around in my pocket a little memorandum book listing the cases. I picked this one out of the list, 161 Va., and Mr. Moore has just handed it to me. Your Honor knows how zealous courts are about guarding against the mention of insurance in the trial of automobile accident cases. In this case, 161 Va., *Majestic Steam Laundry and others v. Puckett*, 161 Va. 524, the lawyer for the defendant was arguing to the jury that the plaintiff wanted to take out of the pocket of this man from Chicago—the defendant was from Chicago—were asking this jury to give the plaintiff \$10,000 out of that man's pocket. This man, coming from Detroit, was traveling around down there and had an accident.

The lawyer for the plaintiff replied and said, "If you just give me \$10,000, I promise you I won't go into this man's pocket for the dime."

They made a motion for a mistrial upon the ground that that was furtively bringing insurance into the case. The Court of Appeals said, "No, you invited it, you invoked it and got the answer, and it was a legitimate argument."

C. Howard Holt.

I say that principle applies exactly to Mr. Mullen's questions asking Mr. Bryan "Why this, that, and the other," and Mr. Bryan had a right to tell him why, and he told him why.

In a situation of that kind, it is an ideal situation. If the Court should differ with me on that, it is certainly not such a departure from what a man had a right to do as to require a mistrial. An instruction to the jury would be entirely sufficient, but we don't think that is necessary.

Mr. Mullen brought it out by the questions he asked, and the same principle applies to a number of other things that they complain of here.

We are at the beginning of the trial, and what has taken place here, before the trial is over I suppose the jury will forget all about it. To declare a mistrial at the beginning will place untold expense on the Plaintiff and the loss of a week's time. I don't think the remarks, under the circumstances under which they were made, are sufficient.

It takes a studied effort over a week-end, with the transcript before them, taking a number of the words out of their setting or context, to give them the meaning which would justify the Court in declaring a mistrial. I submit the motion should be overruled.

The Court: Is there anything further you gentlemen want to say?

Mr. Mullen: If Your Honor please, I have never asked Mr. Bryan "Why." I have carefully refrained from "Why." Here is a question I asked him:

"You went up to Kentucky on the 10th and you didn't communicate with Mr. Hart. Did you ask Mr. Delinger what had been done?"

There is no "why" there, nothing asking why he didn't do it.

"Mr. Bryan: I would just as soon negotiate with Hart as I would negotiate with a robber that threatened to rob my house."

That was not responsive.

Mr. Robertson: You are still taking it out of context. Go back far enough to get the context.

Mr. Mullen: I didn't ask him "why."

C. Howard Holt.

Mr. Robertson: The sense of it was you did ask him "why."

Mr. Mullen: There is no "why" there. I asked him what he did, where he got his report.

Mr. Robertson: Make him read that.

Mr. Allen: Read your question at the top of page 639.

Mr. Mullen: It reads:

"You followed the identical same plan in Hope-page 695 } well to block off the Construction Workers, who had a perfect right to organize your unorganized labor, and you followed the same thing in Kentucky. Instead of sitting down and talking with them to see if you could reach an agreement, you immediately set out to fight them, didn't you, and to block them?"

I didn't ask him "why."

Mr. Allen: You say, "It is exactly the same thing." You are in effect asking him why he didn't negotiate with them, because you say, "Instead of sitting down and talking with them to see if you could reach an agreement, you immediately set out to fight them, didn't you, and to block them?"

If that didn't call for a reason for what he did—

Mr. Mullen: There is a whole page between them.

Mr. Allen: Then he says right there, the immediate answer:

"United Construction Workers and the Mine Workers are outlaw organizations when you come down to it."

That was his answer.

Mr. Mullen: I asked him if he didn't set out to fight instead of sitting down and trying to reach an agreement. That is not a "why."

If Your Honor please, of course the question of how long we took to get this has nothing to do with it. The page 696 } Court was not in session since then. This is the first time we could bring it up. We haven't had to have four lawyers digging through this to dig this up. I never even read the motion, and took no part in it. I worked until 12:30 Saturday night, and I worked all day yesterday at my home except for a few minutes in the afternoon. It was the independent opinion of all of us that what happened there made this necessary.

Colonel Harris: May I add a word, Judge?

The "why" rule is where counsel for the adverse party,

C. Howard Holt.

counsel for the party against whom the improper statement is made, is based on the fact that he invites and provokes it. There is no provocation and there is no invitation. Mr. Mullen has read you one.

Let's go back to another one on page 575. Here is a whole page.

"Q. You were not awarded the contract?

"A. No.

"Q. You were not given any reason?

"A. No.

"Q. You were not told it was because of any of the difficulties you had already had there, were you?"

He answers it in one word, and then makes a speech.

"A. No, we were not given any reason."

Now he starts relating what is in his mind:

page 697 } "We, frankly, conditioned the bid in certain ways that I think were objectionable to Pond Creek." That is pure guesswork and speculation. "For one thing, we said that we expected them to keep those roads in passable condition so we could get in and out, and I don't think they liked that very much."

That is still merely speculating as to the mental operation of a third party.

"For the second thing, we asked that they provide builder's risk insurance with extended coverage, which would protect the buildings against loss or destruction from malicious mischief or acts of vandalism."

He could have stopped there, but he goes ahead to state that he wanted protection against—"malicious mischief or acts of vandalism" isn't sufficient. He said "That was put in there purposely in order to get some protection in case the United Construction Workers and that crowd should come in there and burn the building down."

"Q. But the Pond Creek Pocahontas people never told you that you were turned down because of the trouble you had had there prior to that?

C. Howard Holt.

"A. No, we were not informed. We never had an answer, I don't believe."

It is a remarkable statement that one of the counsel made, and that is, where he has found any facts in human nature to justify that statement is a mystery to me—where
page 698 } counsel stated that for Your Honor to discharge the jury and order a mistrial would make Your Honor's court a laughing stock. I submit that people in Virginia do not laugh, and they find no occasion for merriment when the judges of the Virginia courts hold counsel and litigants to the highest standards. I have never heard of people laughing at a just and upright Judge who holds counsel to the duty which they have violated.

We submit, if the Court pleases, if that sort of argument should be made, it is not the kind of argument that should swerve Your Honor, and I don't believe it ever would swerve Your Honor away from the path of duty and justice as Your Honor sees it.

The Court: Gentlemen, the Court overrules the motion for a mistrial.

The Court also instructs counsel to discontinue any side remarks throughout the balance of this trial.

Colonel Harris: We reserve an exception to your ruling.

Mr. Robertson: If Your Honor pleases—

The Court: How long is your proposition going to take?

Mr. Mullen: Let me ask one thing, Judge. What was your ruling as to reporting what occurred here in chambers?

The Court: You mean in the newspapers?

page 699 } Mr. Mullen: Yes.

The Court: I requested Mrs. Morse not to publish anything that took place in chambers, because the jury might read it.

Mr. Mullen: The reason I asked was because—

Mr. Robertson: I think it is much better not to publish anything that happens here.

The Court: I think they understand that it is confidential in chambers.

Mr. Robertson: Here is what I want to say, Judge. On Friday afternoon when we adjourned, it was perfectly obvious that one juror felt that the case was dragging. We are frankly in this position: We are doing all we can to expedite the trial, but it is necessarily a lengthy trial, and there are many things in it which are going to be tedious and boring that we cannot eliminate. To our best judgment, our case

C. Howard Holt.

will certainly run into Thursday. You see, we have lost an hour and a half this morning. It may well run all this week. If we do that, that will have meant that putting on our case will have taken two weeks. Suppose the other side takes two weeks, and then I think it probable that the instructions will take a day and perhaps the argument a day.

This case, as Your Honor knows—and I think what I am saying now is to the benefit of everybody on all sides—the case is obviously a very important one to us. It page 700 $\frac{1}{2}$ is obviously a very important one for the three defendants. It goes to the very heart of the way they are organized and do business, and I think it is going to be a test case for perhaps years to come. That has nothing to do with this except for a matter of general interest and information. My information is that the case is being featured in the various newspapers throughout Southwest Virginia coal fields, and the West Virginia coal fields, and Kentucky coal fields, and out to Cincinnati and Louisville.

I think it would be a service to everybody in the case if the Court would explain to the jury that this is going to be a trial which it looks like is going to keep them here maybe three weeks longer, and that they have to put up with it; and also, my suggestion is that the Court ask the jury whether they would prefer, for instance, to start at half-past 9 in the morning and run to 6 in the evening, with one hour out for lunch, and sit on Saturday, or do something else.

Frankly—and I say this now in a friendly spirit—I think if we hit that pace, the jury will very soon get to where they don't want it, because I think what the Court, either consciously or unconsciously, has been doing has been a service to the jury, giving them time to go by their places of business in the morning before they come here, to go back at their lunch hour, and to go back there in the page 701 $\frac{1}{2}$ afternoons before they shut up, if they want to.

After we put our case in, they are going to be a week tireder then than they are now, and they are going to be restive and all, with the defendants as much as with us.

That is the suggestion I wanted to make.

The Court: Do you gentlemen have any observations on that?

Mr. Mullen: I am very anxious to get the case through as quickly as possible. Frankly, at my age, it is a strain on me. Instead of trying to delay the case, as Mr. Robertson may think, I have just the opposite desire.

Mr. Robertson: I think you just got mad at me.

C. Howard Holt.

Mr. Mullen: 9:30 to 6:00 o'clock are pretty lengthy hours. Saturday is the time to try to gather together loose ends of things that have occurred all during the week. I don't want to make any—

The Court: I question whether it is physically possible for you gentlemen to start out at 9:30 and work until 6:00 and then stay down at your office until 1:00 o'clock at night and come back again.

Mr. Robertson: Judge, I am doing it anyway. It doesn't make any difference to me.

Colonel Harris: I would like to make an observation on our side of it, too, Judge.

There is an inherent unfairness to the defendant page 702 } ants to start the case off with a certain tempo and let the Plaintiff have the benefit of that tempo, no matter whether a juror likes it or not, and then start increasing the speed and increasing the speed until the time the defendants begin to put on their case. There is an entirely different tempo and atmosphere in the trial from that which was accorded to Plaintiffs.

Mr. Robertson: I am not asking it. I offered it as a suggestion. I do think it would be well, in fairness—

The Court: I thought I told the jury just before we adjourned on Friday that this was a case that couldn't be rushed, and that I had set aside three weeks for the trial of this case.

Mr. Mullen: I am willing, Judge, to do anything that Your Honor wants. Of course, when it gets down to putting on our defense, we have to have some time to talk with our associates.

The Court: I realize that. We all want to go along as fast as we can, but it is necessary to confer with you gentlemen often during the trial of this case, and I have explained to the jury that it is necessary, and I am going to tell them this morning.

Colonel Harris: But I suggest—

The Court: I don't think there is but one juror who is in a big hurry.

page 703 } (The following proceedings were had in open court:)

The Court: Gentlemen of the jury, I regret the delay this morning, but I assure you it was necessary.

(Roll call of the jury.)

Whereupon,

A. HAMILTON BRYAN

a witness for Plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION—continued.

By Mr. Mullen:

Q. Mr. Bryan, on Friday, referring to Mr. Hart, I asked this question: "Yet he was representing your laborers and simply trying to get them a better wage?"

Your answer: "I don't think he represented my laborers. If he did he might not have represented more than one or two out of 15 and 16."

I ask you to refer to page 7-A of your prepared statement and read paragraph E.

A. Which one?

Q. Paragraph E.

A. Let me see if we are looking at the same thing.

(Counsel and witness conferring.)

By Mr. Mullen:

Q. It is 7-B. I beg your pardon. I didn't read my own handwriting correctly. 7-B, paragraph E, please.

A. 7-B. "At about 12 noon on July 26, 1949"—
page 704 } Q. 7-E.

A. I thought you said B.

Q. No, 7-B page, paragraph E.

A. Excepting the superintendent, the chief clerk"—

Q. No, E, please.

A. I am sorry, sir. "Excepting the laborers, all our employees approached by Hart and his group refused to become members of the United Construction Workers."

Q. On your direct examination—

Mr. Robertson: What day is that, Mr. Mullen?

Mr. Mullen: On the 23rd, page 253.

By Mr. Mullen:

Q. You were asked: "Did you give any instructions to Delinger or Ragan as to what they should do regarding the situation over the week-end?"

Your answer was: "Yes, I gave instructions that they should watch the situation closely and keep me informed of any developments."

A. Hamilton Bryan.

Will you refer to page 5 of your prepared statement and to the last line of the first paragraph on there and read that sentence, please.

A. "He suggested to Mr. Delinger that he ignore the United Construction Workers."

Q. On the 26th you got to the job around three o'clock?

A. Approximately that. I believe it is stated page 705 } in this memo about three. It might be 2:30, around a quarter of three.

Q. You met on the road a number of automobiles which you state contained the men who had been there earlier, is that correct?

A. Yes, we met a perfect caravan of automobiles headed in the opposite direction, leaving the mine, rather going back toward Royalton, in the opposite direction from which we were going toward the mine.

Q. You know nothing, do you, of your own knowledge, as to what happened there prior to three o'clock or, say, around three o'clock? All you have are reports made to you?

A. That is correct. I didn't get there until after the big trouble had all happened. Of course I inquired about it and was informed, but I didn't see it myself.

Q. You heard Mr. Robertson's opening statement here in which he said, "A crowd of men, a nondescript group of men, some of them carry *uns*, came to the plant," and your testified that you had a report that a lot of them were armed. Will you please refer to your prepared evidence, page 7-C, and read paragraph II?

A. "Many of our workers believed that some of the group headed by Hart were carrying guns or pistols. While nobody saw any guns, some of our employees thought page 706 } that they saw the outline of pistol handles or bullet cylinders concealed under the shirts or in the pockets of some of the group. Our carpenter foreman on the schoolhouse said he heard shots after the group left the schoolhouse and went around a bend in the road as they were going toward the tippie."

Q. Was it reported to you that on the morning of the 26th before you arrived, that Bert Preston, legal representative of the local Paintsville union, but not an employee, as you have stated, said to Mr. Hart that he could not strike because he had a contract with you, but that if he established a picket line he would honor it?

A. No, it wasn't reported to me before I came to the job.

Q. Was it reported to you that Bert Preston asked "Will

A. Hamilton Bryan.

there be a picket line tomorrow?" and he said that if there is not a picket line our men will work?

A. It was reported to me that Bert Preston said something to that effect. However, there is a question as to what Bert Preston meant by picket line.

I might add, Mr. Mullen, that that is what Mr. Preston said at the job site. I heard that he said something like that at the job site at that time.

Q. Then later in the afternoon you met Mr. Hart on the page 707 } 26th and had a talk with him. Did Mr. Hart tell you that he had received the message which you had phoned to Mr. Hunter, that you had had plenty of time to talk to his office, and that not having heard from you that plans for a strike had been made and it was too late to stop?

A. I don't know that you got that exactly right. I called Mr. Hunter—Rather, I placed a call for Mr. Hart early on the morning of July 26 at about 7.15 a. m. I was in Huntington and placed a long distance call for Mr. Hart in Pikeville. I had his telephone number. Mr. Hart wasn't there, and I was told I could talk to Mr. Hunter, who was the regional director. So I talked to Mr. Hunter and told him that I had had this report that Mr. Hart was leading a large crowd of men to our job for the purpose of stopping the work and closing the job down. I told Mr. Hunter that I was trying to get to the job site just as soon as I could. I asked him please to ask Mr. Hart not to interfere with any of our workers until I could talk with him at the job site. Later when I talked to Mr. Hart I told him about my conversation with Mr. Hunter, and Mr. Hart said yes, he knew it, that Mr. Hunter had informed him, Mr. Hart, about my telephone conversation, and then Mr. Hart said that he had already made his arrangements and it was too late to change them. After that Mr. Hart referred to his telephone conversation with me on July 14, in which he then said that he was going to organize all of our workers and close down the job unless we page 708 } recognized the United Construction Workers. He said that I hadn't—

Q. I don't want to interrupt you, Mr. Bryan, but it is not responsive to the question. I simply asked, did Mr. Hart tell you that you had had plenty of time to talk to his office.

A. He said he hadn't heard any more from me since July 14, and so United Construction Workers had decided to close down the job.

Q. All right. Now we come to the 27th. You went to the

A. Hamilton Bryan.

job and you testified you took 25 carpenters with you. Who did you find there at the job when you got there?

A. When we got there, there wasn't a soul there. That is at our office, which you passed before you went down to the tipple.

Q. You say there was no one there when you got there?

Q. When we first got there, there was no one there. There might have been—Maybe I should qualify that. I don't think I was the first person at the job. We all left at about the same time. Maybe some of our people got there a minute or two before I did, but outside of our own group I didn't see anybody.

Q. Didn't you say you saw two men sitting on a log there?

A. Well, I said that that was up at the office. You went down the road from Evanston—as you go down the road from Evanston toward the coal preparation plant
page 709 } which we built you first passed the temporary buildings which we put up to take care of the men, the barracks, the mess halls, office, bathhouse, cook's quarters. You turn right there and go down another road which leads to the tipple. We all stopped at our office, and there wasn't any one there. When I got down to the tipple there were two men sitting on a pile of lumber.

Q. Do you know who they were?

A. I didn't know who they were. Some of my fellows talked to them. I didn't know who they were.

Q. Were there only carpenters who went with you to the job on the 27th?

A. No, sir.

Q. Were any of your laborers with you?

A. I didn't see any laborers. Most of those fellows lived in Breathitt County around Decoy. Some electricians went with us, and some iron workers went with us. That is about all I can think of.

Q. Then Mr. Harvey J. Robinson, you testified, arrived. Who is Mr. Robinson?

A. He showed his credentials. He was a field representative of the United Construction Workers and District 50, working in Region 58. I understood he was on par with Mr. Hart.

Q. Who was with him?

A. I didn't know, Mr. Mullen. After we got
page 710 } there to the job we found a picket sign sitting on a barrel or on some rocks by the office, and I picked up the picket sign and threw it in the bushes, and lead about

A. Hamilton Bryan.

seven or eight or ten carpenters down to the tipple. I was down there with them for a while, while they were getting ready to go to work. Then I went back to the office. When I got back there I found Mr. Robinson. I don't know who came with him. There were a few more people there, though.

Q. Those people who were with him, were they not the men who had been working there as common laborers?

A. No, sir; I didn't recognize the common laborers. I mean by that I wouldn't—if I had seen one on the street I wouldn't have known whether he was a laborer or not.

Q. In other words, you didn't know personally all the people working on your job?

A. No, sir; I didn't.

Q. Didn't you say to that group there with him, "If you want to work at 90 cents an hour, go on to work"?

A. No, I don't remember that. I remember going back up there. I wanted to get more people to go back to work and I tried my best to persuade them to go to work.

The Court: You don't remember making that statement?

The Witness: No, sir.

The Court: I think that answers the question.

page 711 } By Mr. Mullen:

Q. Do you remember their stating they didn't want to work for 90 cents?

A. No, I don't remember that.

Q. Did you tell a group of them then, "All right, if you don't want to work, go get your time"?

A. No, sir. That was a Wednesday, and it was regular payday. Some of the men went in to the office, the people around there, to get their wages for the preceding week. The chief clerk, Mr. Ragan, will be here to testify. I feel certain that some of the men went in there and got their money because it wasn't due them until that day. I wanted to get men to work.

Q. Neither Mr. Robinson nor any of the men with him at that time made any threats, did they?

A. I don't recall Mr. Robinson's making any threats. I talked to him. I don't have a very clear recollection of what my conversation was with Mr. Robertson. I feel sure that he showed me his credentials, and I feel sure that I told him that we were trying to get men to go to work.

Q. Did he tell you who they wanted you to recognize the UCW as representing?

A. Hamilton Bryan.

A. No. My conversations have always been that all the workers would be organized, and I just assumed that they would all be organized by the United Construction page 712 } Worker^d and the same thing applied.

Q. But there was no conversation between you on that subject at that time?

A. No. I thought at the time that Mr. Robinson was a sort of assistant to Mr. Hart, and I expected Mr. Hart would be coming out a little bit later, but he never did come.

Q. When the Paintsville carpenters—and by Paintsville carpenters I mean the carpenters who were members of the local union at Paintsville—didn't go back on the job, did you try to get Salyersville carpenters, members of the Salyersville union that had been established?

A. Yes, sir; I did.

Q. You have testified that Mr. Freeman, I believe, the International Representative of the Carpenters Union, was present at a meeting later, I think on the 2nd of August. Did he tell you you had to deal with Paintsville and not with Salyersville?

A. He took the position at that meeting that we had an agreement with the Paintsville local and that we would have to continue to obtain carpenters through the facilities of that local.

Q. You have testified that on Sunday, the 31st of July, you went to the job site with a man named Charlie Williams, who was a contractor, and that you offered to make page 713 } him an assistant to Mr. Veltry who was coming to take Mr. Delinger's place. You testified that later on, after you had returned to Salyersville, he came to you and said that he could not take the job, it would make his wife nervous. Will you turn to page 23 of your prepared evidence there, the ninth line, and read what Mr. Williams said to you?

A. Will you give me that reference again, sir?

Q. Page 28, 9th line, I think it is, sir.

A. I don't see it there. There are two references in here about conversations with Mr. Williams.

Q. I will ask for the reply he gave you on page 28, the 9th line.

A. I think that is the wrong page.

Q. That is the wrong page. I will give it to you in a minute. Page 23, the last two lines of the last paragraph.

A. "Mr. Bryan told Charlie Williams that Mr. Delinger had gone to Richmond and that he had another superintendent, Mr. Louis G. Veltry, coming to the job. Mr. Bryan asked Mr.

A. Hamilton Bryan.

Williams if he would like to work on the job as assistant to Mr. Veltry. Mr. Williams indicated he would like to do so, but that he would give the matter further thought. After supper Charlie Williams said he had decided not to take the job with us because his wife said that it would make her nervous. He also said that he had considerable contract work which needed his attention."

page 714 } Q. When you were testifying before you left out that last sentence, I believe.

A. I hadn't memorized that thing, and I was doing the best I could.

Q. On Monday, August 1, you again went to the job, got there about seven o'clock. Did you find anybody there then?

A. Yes, sir; there were some people there at that time.

Q. Do you know who they were?

A. Some of them were our carpenters. They had heard a report abroad that we were going to make another effort to go back to work.

Q. They were men, I believe you said, that Mr. Poe sent over there.

A. When it became apparent that the Paintsville local men were afraid to go back to work I had asked Robert Poe, the business agent of the Salyersville Local, to help us out and he said he would try to. A lot of our carpenters were members of the Salyersville local anyway.

Q. While you were waiting over there to see if these men would go to work you put in a call for Mr. Joinville in Richmond, did you not?

A. Yes, sir.

Q. In your testimony-in-chief you have testified, "I told Mr. Joinville about our trouble and asked Mr. Hart if he would like to speak to Mr. Joinville."

page 715 } So Mr. Hart got on the phone. Of course I didn't hear what Mr. Joinville said, but I did hear Mr. Hart tell Mr. Joinville that we couldn't do any more work unless we used United Construction Workers men."

I will ask you to refer to page 27 of your prepared testimony and read the first sentence that you have underscored in red thereon.

A. My copy is not underscored in red here, sir.

(Document provided to the witness.)

"Mr. Hart told Mr. Joinville that he and his group would stop us from working unless we recognized his laborers."

A. Hamilton Bryan.

Q. Unless you recognized his laborers it says there, does it not?

A. That is what it says.

Q. Later on, in talking on that day with Mr. Hart, didn't you inform Mr. Hart and say to Mr. Hart that the work could go along without any laborers since the carpenters on the job would be willing to do the work which normally a laborer should do?

A. I had a conversation with Mr. Hart about that. I told Mr. Hart that I had heard from Robert Poe that at the meeting at Tiptop the day before when they had the gathering of about 250 people, Mr. Hart had indicated that he might let the laborers go on back—I mean the carpenters
page 716 } go on *go on* back to work. Mr. Hart said, "Yes, that he had, but that they had changed their minds and that the carpenters could not go back to work unless we agreed to recognize United Construction Workers as the bargaining agent for the laborers." I don't know whether that is the exact language, but it was words to that effect.

I then told Mr. Hart that we probably could get along without the laborers if necessary and that the Carpenters could do this work, which consisted mostly of helping carpenters, carrying materials and doing things like that.

Mr. Hart said no, that he represented the laborers and that we would have to recognize him. I think I told Mr. Hart that I wasn't so sure that he represented the laborers. I think we had a discussion again about the application blanks the laborers had signed for joining the Salyersville local. He said he had represented them anyhow and he was taking over.

Q. But he told you at that time that he was only representing the laborers, and if you recognized those you could go back to work, didn't he?

A. Yes. That was the first time he took that position in his conversations with me, but he did take it then.

Q. But at that time you asked him to call off the strike because you would employ only carpenters and didn't need any laborers, and the carpenters would do the work normally done by the laborers?

page 717 } A. I never asked Mr. Hart to call off his strike. He continually threatened to bring a large crowd of people there from Beaver Creek and other places to stop us from working if any of our people went to work. He said he would do that unless we signed a paper recognizing his organization as the representative of the laborers. I said I

A. Hamilton Bryan.

wouldn't do it and couldn't do it. I tried to explain my position to him and he said, well, we had to do it if we continued to work. I said I wouldn't do it.

Q. Mr. Bryan, didn't you ask him to leave your work alone if you employed only carpenters?

A. I don't think I asked him just that. I told him—in the conversations before he always said he was taking over all the work, representing all the employees. In the conversation on August 1 he shifted his position for the first time that I knew about and then said that the other people could go to work if we would recognize them for the laborers. I think that is about what it was.

Q. Didn't he tell you if the carpenters did the work that was normally done by the laborers, that that would be scabbing?

A. I told Mr. Hart that the little work which remained to be done at that time on the coal preparation plant and the houses, finishing up the schoolhouse, could be done by the carpenters.

Mr. Hart said no, that he wouldn't agree to that.

page 718 } Mr. Mullen: Mr. Reporter, will you read the last question?

(The pending question was read by the reporter.)

By Mr. Mullen:

Q. Did he tell you that?

A. I don't remember Mr. Hart's mentioning the word "scabbing." I know that we had a conversation about the carpenters going ahead and doing the work which would normally be done by laborers in helping carpenters. I said it could be done.

The Court: You don't remember his using that word, That is the question.

The Witness: He said he wouldn't agree to it.

By Mr. Mullen:

Q. The next day you had the meeting of a group of some thirteen A. F. of L. people?

A. That is right.

Q. You had requested Mr. Hart to be there, and he came there and waited 45 minutes, didn't he, something like that?

A. I believe the meeting was scheduled for 10 o'clock at the Carpenters Hotel. I had asked Mr. Hart to come and would he please ask Mr. David Hunter to come. We went into the

A. Hamilton Bryan.

meeting in the dining room at the Carpenters Hotel, and I asked Mr. Ragan to wait outside and let me know when Mr.

Hart arrived, if he did come. After we had been
page 719 } in the meeting for a while Mr. Ragan told me he
was there, and about 45 minutes after the meeting
started I went out and talked to Mr. Hart. I couldn't leave
the meeting before that.

Q. The meeting refused to talk to him?

A. Well, after I found out that Mr. Hart was outside, at the first appropriate chance I informed the group that Mr. Hart was outside and I suggested that they talk with him. Various business agents and other A. F. of L. representatives—I don't know whether they all got up or just some of the leaders got up and went back into the kitchen behind the dining room. The kitchen was not in use. They had a little chat back there. They came back, and I was told that they had nothing to talk to Mr. Hart about and did not care to see him.

Q. Mr. Hart was so advised?

A. I went outside and told Mr. Hart that that was their position, right away as soon as they told me.

Q. That is what, on the 2nd of August. On the 3rd of August you went to Huntington and talked with the Pond Creek Pocahontas people, I believe.

A. Yes, sir.

Q. And on the fourth you state they wrote a letter terminating the job?

A. That is right.

Q. That letter you have put in evidence.

A. I think it has been offered.

page 720 } Q. Who wrote that letter?

A. Mr. McDonald, the Assistant Counsel.

Q. Were you present in his office when it was written?

A. I was in the room, but I did not dictate it.

Q. But didn't you make some suggestion as to some of the language in it?

A. I think the only suggestion that I made was that Mr. McDonald in originally dictating the letter mentioned United Construction Workers and United Mine Workers, or maybe it was that he mentioned District 50 and United Mine Workers, and I said that I thought the proper way to say it was United Construction Workers, a division of District 50 of the United Mine Workers.

Q. The recital in there is that about noon July 26, 1949, we understand that your men were prevented from continuing to work on the tippie by threats and other action of the

A. Hamilton Bryan.

representatives of the United Construction Workers, a branch of District 50, United Mine Workers of America. That was based on what you had reported to them the day before, wasn't it?

A. Well, they knew it. Mr. Salvati had been out to the job the very day all this happened, and they had been kept in close touch with the situation all along. I suppose it was partly based on what I had reported to them the day before and partly on what they already knew.

Q. The next day, August 5, you went to Pikeville, I believe it was, to have a conference with David Hunter.

A. That is right.

Q. And you conferred there from 4:30, I believe, to about 8 o'clock.

A. Roughly. It was a rather long meeting.

Q. He gave you a form of contract that they use as the basis for agreements with the United Construction Workers, didn't he?

A. Yes, sir; he showed me an executed copy of a contract with Beckett Construction Company, and gave me another form of contract. There were some little differences between them, and we compared the two.

Q. In other words, this form of contract was a form as a basis for negotiation, and he had made changes in the actual one negotiated?

A. He presented to me two types of forms of contracts. One was you might say a form of preliminary agreement under which a contractor or employer would agree to recognize United Construction Workers and would then agree to negotiate with the United Construction Workers for terms and conditions. That was simply—it was on the letterhead of the United Construction Workers and was in the form of a letter, as I recollect. It is in evidence. Then he presented to me

the more formal type of contract which would be entered into pursuant to the preliminary recognition. He presented to me a blank form of contract, and he also showed me an executed contract. The two forms of the more elaborate contracts were not the same, outside of various other changes.

Q. You went over with him paragraph by paragraph the forms?

A. We read them, yes, sir. I think that I read the unexecuted form of contract that he gave to me instead of the one which had been executed by Beckett. I might have read them both.

A. Hamilton Bryan.

Q. Then toward the end of your conference you told him, did you not, that you didn't see how Laburnum Corporation could make an agreement with UCW or told him that you might sue him. Will you please turn to your memorandum of conference which A. Hamilton Bryan had with David Hunter in Pikeville, Kentucky on August 5, 1949, starting on page 6 at the sentence beginning in line 18, and read that paragraph, please.

A. Page 6?

Q. Page 6, starting at line 18.

A. "I told Mr. Hunter that for many years we had worked under agreements"?

Q. You can read the whole paragraph if you wish.

A. "I told Mr. Hunter that for many years we page 723 } had worked under agreements with an A. F. of L. local union and that Laburnum had a contract with Richmond Building and Construction Trades Council which required us to do so. I told him that I did not see how Laburnum could make an agreement with United Construction Workers. Mr. Hunter said that if that was the case I had wasted a lot of my time and his time, too. I then told Mr. Hunter that there was a possible way out by forming another corporation which would make an agreement with United Construction Workers, but that I did not believe that A. F. of L. workers would work in harmony with United Construction Workers. Mr. Hunter said that they had been working in harmony on the job that Beckett Construction Company has at Wheelright."

Q. Mr. Bryan, will you please turn to Page 9 and read the second paragraph beginning with the words "As the situation stands"?

A. "As the situation stands now, Mr. Hunter knows that we may bring legal action against the United Mine Workers of America, but he does not know how, when or where we may start. He also understood that we may consider forming another corporation and make some kind of agreement with his group."

Q. Then you had an interview on May 15, 1950, to which you have testified, with Mr. Hunter, and you have a memorandum of that conversation, is that true?

page 724 } A. Yes, sir.

Q. From which you were testifying here before?

A. Yes, sir.

Q. Will you please turn to page 3 and read the last para-

A. Hamilton Bryan.

graph on that page, which paragraph extends over on to page 4?

A. "Mr. Hunter said that if we got additional work in Mingo, Paintsville or elsewhere in his area, he would attempt to organize our laborers and our other workers, and that if he was successful he would expect us to make a contract with UCW granting recognition to it. He said that he would not undertake to tell us that we could not bid for work in Mingo, that as American citizens we had the right to bid, but that if we got the work he would expect it to be done with UCW workers. Mr. Hunter said that he would not permit us to bring in outsiders, that we would have to use local UCW labor."

Q. Will you also read the last paragraph on page 4, "Mr. Hunter again emphasized * * *?"

A. "Mr. Hunter again emphasized that it would be o. k. for us to bid for the work in Mingo County, that if we got it, he would try to organize the job and have us sign an agreement with UCW."

Q. Where is Louisa, to which you referred in your testimony?

A. Louisa, Kentucky, is right on the Big Sandy page 725 } River, right across the West Virginia line. The little town across the river in West Virginia is called Fort Gay, on the main road from Huntington to Paintsville.

Q. Is that where the job you referred to as being handled by the Hamill Company was?

A. That job was an office building near Ragland, West Virginia, in Mingo County.

Q. That was not the job at Louisa?

A. No. In connection with the job of the Hamill Company on the office building at Ragland, Mr. Hunter said that he had met—

Mr. Mullen: I haven't asked him about what Mr. Hunter said, if Your Honor please. He has been over that. I was simply trying to locate the place.

The Witness: I am sorry.

By Mr. Mullen:

Q. You have put in evidence the statement listing damages amounting to \$29,478.86, the item being loss of fee on contract for construction of 25 dwellings, \$534.19—

A. Hamilton Bryan.

Mr. Robertson: What page?

Mr. Mullen: Page 418.

By Mr. Mullen:

Q. —damage from loss of fee on work in connection with the construction of schoolhouse, \$319.67, damage from loss of fee in connection with the installation of as-
page 726 } bestos shingles of 25 dwellings, \$250, damage from loss of fee in connection with work for the installation of concrete foundations for coal preparation plant for No. 2, now called No. 3 mine, \$1,250, damage from the loss of fee on other additional work in Breathitt County, Kentucky, amounting to approximately \$542,500 which Pond Creek Pocahontas Company had agreed to have Laburnum Corporation handled on the basis of cost plus a fee of 5 per cent, \$27,125. Total \$29,478.86.

In regard to that last item, the work amounting to approximately \$542,500, you have testified elsewhere it was \$617,500. What makes up the difference?

A. Just a minute, Mr. Mullen.

(Witness computing.)

I took off \$50,000 to cover the approximate cost of the work in connection with the 25 dwellings. I have a statement or schedule made out showing how I arrived at it, but I can't remember it all right now. I would have to look at it.

Q. Do you recall what the 25 dwellings cost? I think you have testified to that somewhere.

A. I think I have it here. Our billings on the 25 dwellings amounted to \$21,285.05. In arriving at the figure of \$542,500 I allowed credit for some of the work which we had done so it wouldn't be too big.

Q. You are suing for \$500,000 damages.

A. Yes.

page 727 } Q. Here is \$29,478.86. How do you divide up your other items?

A. The other items are made up for loss of profits in connection with additional work which we would have received in view of our business connections with Pond Creek Pocahontas Company, Island Creek Coal Company, and its affiliated companies.

Q. Have you a specific amount for that?

A. You asked us to give an itemized statement, and we furnished our idea of approximate amounts.

A. Hamilton Bryan.

Q. Will you state, please, what those approximate amounts were?

A. The other three items?

Q. Yes.

A. Making up the total of \$500,000: Damage by reason of the destruction of the business relationship and connection which Laburnum Construction Corporation had developed and built up with Pond Creek Pocahontas Company, Island Creek Coal Company and their associated and subsidiary companies, \$120,000. Damages to plaintiff's reputation \$100,000. Punitive damages, \$250,521.14. Adding all those items together you get \$500,000.

Of course the last items were necessarily approximate.

Q. Mr. Bryan, during the period from July 26 through August 5, when you were out in Breathitt County page 728 } and in that general neighborhood, did anybody shoot at you?

A. Nobody shot at me, that I know of.

Q. Did anybody try to beat you?

A. No, nobody made a pass at me.

Q. And you went all through that country day and night, which you say is so wild, and you were the head of the business that the trouble was about, and no one offered to interfere with you or to stop you in any way, did they?

A. Mr. Hart threatened to.

Q. I asked if anybody did stop you or if anybody did prevent you from going around.

A. No, nobody actually did it.

Q. Nobody offered you any violence of any kind while you were going around on the roads and all?

A. It depends on what you mean by offering violence. If that means threatened violence, I would say yes. If it doesn't the answer is no.

Q. Were any of your employees beat up?

A. I didn't hear of anybody getting a mauling.

Q. Was anybody shot at?

A. No, I didn't hear that anybody got shot at.

Q. Was any property destroyed?

A. No, I didn't hear of any property being destroyed.

Q. Were any automobiles overturned?

A. No, I didn't hear of it that I know of.

page 729 } Q. In other words, it was all talk and no action.

A. Well, I guess you just don't understand the situation

A. Hamilton Bryan.

out there. When they tell you not to do something, you had better not do it.

Q. Yet nobody was hurt, nobody was shot at.

A. I tried to get my people to go back to work by every way known to man, and I couldn't do it.

(Defendants' counsel conferring.)

Mr. Mullen: If Your Honor please, that is all that we have to ask Mr. Bryan at this time. We serve the right, of course, to cross-examine him on the information that he was requested to furnish this morning when we get that. With that exception, we are through, and I believe I kept the promise to Your Honor to get through by midday today.

Mr. Robertson: Stand aside.

Now, if Your Honor please, Mr. Mullen has cross-examined Mr. Bryan from the original memorandum that Mr. Bryan used as his guide when he testified in chief and I therefore now ask that this memorandum be introduced in evidence for what it is worth.

Colonel Harris: We object to that and call the attention of the Court to the fact that Mr. Robertson in the examination-in-chief had a copy of it that he was using from the very beginning. The witness had one copy and Mr. Robertson had the other. Mr. Robertson made the state-
page 730 } ment in the presence and hearing of the jury that he always prepared such a statement.

Mr. Robertson: I am being quoted inaccurately, but I am not asking that it go in for any benefit of mine. Mr. Mullen used it as the basis of his cross examination of Mr. Bryan, and I think the jury is entitled to have it in evidence in case they want to see it when they go to the jury room, and they can call for it and see the whole thing and determine what credit we will give Mr. Bryan.

Mr. Mullen: Your Honor, I think the law is that where a witness testifies from a memorandum, opposing counsel at the end of the testimony has the right to see it and to cross-examine from it, but that it is not properly in evidence unless opposing counsel requests that it be made so, because it is a narrative form of evidence underscored and emphasized and so forth with various points. We simply asked for certain of the rights that we had to examine it at the close of his testimony, and unless we ask for it to go in I don't think it can be put in.

Mr. Robertson: If Your Honor please, I can shorten this

A. Hamilton Bryan.

a great deal, In view of their objection to it and in order to avoid delay, I withdraw my offer,

I ask them if they also object to my introducing in evidence the memorandum from which you cross-examined Mr. Bryan regarding his interview with Mr. David Hunter
page 731 } on August 5, 1949. I offer that, but I want to know whether you object to it or not,

Mr. Mullen: If Your Honor please, it is exactly the same.

Mr. Robertson: All right, I withdraw it for the same reason,

Mr. Mullen: He has testified to the contents of them and we asked him about what had been left out,

The Court: Very well, the offer is left out.

Gentlemen, we will recess for lunch and be back at 2:15.

(Whereupon, at 12:45 o'clock p. m. the Court recessed until 2:15 o'clock p. m. the same day.)

page 732 } AFTERNOON SESSION,

2:15 p. m.

(The following proceedings were had in Chambers:)

Mr. Robertson: Judge, we are starting now to put on witnesses from Kentucky who are going to testify about specific episodes that occurred there, and they are going to repeat the exact language used. Some of it is pretty rough talk, and I noticed a number of ladies in the room. I think they are members of the families of various people here. There is nobody out there that I recognize at the moment. It doesn't make any difference to me whether they stay in or not. I think the witnesses are going to be reluctant to repeat the language used if ladies are sitting there. I don't know whether the ladies want to hear it or not. I don't think about the lady from the press. I am trying in good faith to avoid all this jockeying in front of the jury, and that is why I am bringing it up here in chambers. I am suggesting it. If these gentlemen object to it, it makes no difference to me.

Mr. Mullen: Just what is it you are going to bring up?

Mr. Robertson: A whole lot of cussing.

Mr. Mullen: You are going to identify the people who did it?

Mr. Robertson: Yes, I am going to have them on the stand and have them repeat what was said.

page 733 } Mr. Mullen: In the presence of Mr. Hart?

Mr. Robertson: In the presence of wherever

~~I think it is admissible.~~

A. Hamilton Bryan.

The Court: Your point is that there are ladies in the Court-room and you do not want to see them embarrassed?

Mr. Robertson: And I don't want my witnesses embarrassed by not wanting to repeat this language before them.

The Court: Do you gentlemen have any observations you would like to make?

Mr. Mullen: I haven't any observations.

The Court: The witness is entitled to say what occurred.

Mr. Mullen: I appreciate counsel's embarrassment.

Mr. Robertson: I am not embarrassed. It is all right with me, Your Honor. Let them stay.

Mr. Mullen: Mr. Lewis asked me on Saturday if I had any idea what day he could be put on, that he had been holding himself awaiting your call. He has managed to keep everything open this week except on Thursday, when Mr. Wilson has asked the heads of the unions to meet with him on the matter of controls. You know who Mr. Wilson is.

Mr. Robertson: It is only about two hours from Washington down here. I can tell you that I do not know and will not know until I know how this case develops,
page 734 } and I am unwilling to commit myself.

Mr. Mullen: He would be glad to come Friday or Wednesday or any day.

The Court: Try to arrange it so it won't hit on Thursday.

Mr. Allen: I don't think it will hit on Thursday.

Mr. Robertson: I will do my best not to have it go on Thursday, but I am unwilling to commit myself.

The Court: You wanted to make a statement?

Mr. Mullen: I have spoken to Mr. Robertson and he doesn't object to it.

page 735 } (The following proceedings were had in open court:)

The Court: Are there any witnesses in the courtroom who have been excluded?

Mr. Robertson: Mr. Dixon, my next witness, is here and I am going to call him to the stand.

(Conference at the bench.)

Mr. Mullen: If Your Honor please, I would like to state in regard to the absence of Mr. Fred Pollard, who is one of the counsel for defendants, that Mr. Pollard was taken ill on Saturday, he is running quite a high temperation today, 103,

Frank Dixon.

and I don't know when he will be able to be back. I think it proper that I should explain why he is not here today.

The Court: Let the record show that Mr. Pollard's absence is due to illness.

Mr. Robertson: If Your Honor please, we have reached the stage of this trial where we are going to introduce a number of witnesses from Kentucky to state what occurred in various episodes out there, and there is going to be some rough talk. I don't think from all witnesses, but from some of them, pretty rough expressions. I notice a number of ladies in the courtroom. They might not want to hear it, and the witnesses might not want to say it in front of them. I suggest that they leave.

The Court: As I understand it, it is immaterial to you whether the ladies stay or not.

Mr. Robertson: No, sir; I can stand it.

The Court: Ladies, it is up to you whether you want to stay or not.

Who is the first witness?

Mr. Robertson: Mr. Frank Dixon, who was not sworn.

Whereupon,

FRANK DIXON

a witness for the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Dixon, your name is Mr. Frank Dixon?

A. Yes, sir.

Q. Where do you live?

A. I live in Beuchel, Kentucky.

Q. How far is that from Breathitt County?

A. I should judge roughly around 190 miles.

Q. Speak loud enough for the jury to hear you without using the microphone, if you can, please.

Were you born and raised in Kentucky?

A. No, I wasn't.

Q. Where were you born and raised?

A. I was born in West Virginia.

Q. Are you connected with the American Federation of Labor?

A. Yes, sir; I am.

Frank Dixon.

Q. What is your position, if any, with that union?

A. I am an international representative of the United brotherhood of Carpenters and Joiners, affiliated with the American Federation of Labor.

Q. How many years have you occupied that position with the union?

A. About four years all together.

Q. What are your duties in that position?

A. As an international representative, my duties are to go around over the state on assignments from our international office where we might have disputes or to organize, maybe to settle some dispute between one local union and another over maybe jurisdiction or territorial dispute, strikes, or what have you that might come up. We would be sent in there maybe to investigate it and find out what the trouble is all about and make a settlement in the matter if possible.

Q. In the discharge of your duties have you from time to time had knowledge brought to your attention of the contests and differences between the A. F. of L. and the United Mine Workers of America?

A. I have.

Colonel Harris: We object to that on the page 738 } ground it would be hearsay.

Mr. Robertson: I think I can explain it in a minute, Your Honor. I am laying the foundation for him to state whether or not he knows that there is competition between these three defendants here and the A. F. of L. for the organization of different crafts, particularly construction workers. I think it is admissible.

The Court: I will overrule the objection.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. I think the question was, in the discharge of your duties have you come to know about the contests and accords and differences between the American Federation of Labor and the United Mine Workers of America.

A. Yes, I have.

Q. Is that also true as to the American Federation of Labor and District 50 of the United Mine Workers of America?

A. That is right.

Q. Is that likewise true as to the American Federation of Labor and the United Construction Workers, affiliated with the United Mine Workers of America?

Frank Dixon.

A. That is right.

Q. Does the American Federation of Labor and the three unions that I have named compete to organize in the same geographical territory?

page 739 } A. The United Construction Workers does.

Q. What is the nature of that competition?

A. The United Mine Workers has a set-up of an organization known as the United Construction Workers. They are in direct competition with our organization as far as construction work is concerned. They do attempt to organize construction jobs, in other words what we call reconstruction. That construction would consist mostly, you might say, in the eastern part of the state around the mines. In and around these mines of course we have signed contracts maybe with certain contractors. I don't know whether that is to be brought out here or whether you wish to bring that out. We can say probably in the case of the Laburnum Construction Company. We had a signed contract with this company to build coal hoppers, school buildings and houses and things in Breathitt County.

Q. Mr. Dixon, in union talk what is meant by one union raiding another?

A. That comes under the case practically you might say in the same instance here between the Laburnum Construction Company and our organization. As I stated before, we had a signed contract with the Laburnum Construction Company to furnish the carpenters and millrights on that job. Of course there wasn't any dispute there. At the start of the job the thing carried on nicely for I think a period of

page 740 } around six or seven months. Out of a blue sky the

United Construction Workers came on the job and told the men either they were going to get off the job, that it was their work, or else they were going to have to join the United Construction Workers if they wanted to work there.

Mr. Mullen: If Your Honor please, is the witness testifying from his own knowledge. He already has said he was a hundred miles away from there.

Mr. Robertson: I understand the witness is testifying from information that he got in the routine discharge of his duties and reports made to him.

The Court: Is that true?

The Witness: How is that again?

The Court: Is it true that this is information that you re-

Frank Dixon.

ceived from reports, or do you know it from your own knowledge?

The Witness: I know it from my own knowledge, sir.

The Court: Go ahead.

Mr. Robertson: I have forgotten where you got to. Read the last sentence or two of his statement.

(The answer to the question was read by the reporter.)

By Mr. Robertson:

Q. Is that an illustration of raiding a union?

A. That is what you might say a definition of raiding, we will say on particular work like that, that is the page 741 } practice that they have. For instance, in this particular case here there was a gang of men of 50 to 100 people who came out there on the job and demanded of these men to join their organization or else they would have to get off the job. That is raiding of a construction job. That is raiding the work. In other words, it is taking advantage of one group of people that already has a contract. It has happened in other instances around the eastern part of the state of Kentucky.

Colonel Harris: We move to disregard that statement.

The Court: You gentlemen will disregard that statement.

Mr. Robertson: Before that, Your Honor, you remember we have set out in our trial brief and I am coming to this in a few other questions, we maintain and I think the Court has heretofore ruled that other instances of the same sort of thing in this Eastern Kentucky area, both before and after that, is admissible to show a pattern of behaviour.

The Court: In what period of time?

Mr. Robertson: Any reasonable period of time, one year, two years, three years.

Mr. Mullen: If Your Honor please, Your Honor has not ruled on that question. It hasn't come up yet for argument. I know because I have a note of argument on it. It page 742 } has not come up and has not been ruled on by Your Honor.

Mr. Robertson: I will ask the Court to defer its ruling because it is going to come up in a very few moments.

The Court: Very well.

By Mr. Robertson:

Q. Mr. Dixon, do you know the policy of the American Federation of Labor about honoring a picket line?

Frank Dixon.

Colonel Harris: We object to that, if the Court pleases. It is not a question of policy of the American Federation of Labor. It is a question of what those men out there on that job did about honoring the picket line. If they honored the picket line, whether they are American Federation of Labor or whether the American Federation of Labor had a policy of doing it or not, is immaterial.

Mr. Robertson: Are you through?

Colonel Harris: Yes.

Mr. Robertson: If Your Honor please, it has been stated here by counsel on the other side, I think by Mr. Mullen, that it was a point of honor or an unwritten law among unions to honor each other's picket lines. I am laying the foundation to meet my friend's objection, but I can ask but one question at a time. I am asking him now does he know what the policy generally is about honoring a picket line. I think he is going to say yes, and then I am going to ask him what would the policy of the A. F. of L. be in honoring any kind of picket line under such circumstances as prevailed on this job on July 26.

Colonel Harris: And we expect the evidence to show actually that the men out there honored the picket line. Suppose the policy of the A. F. of L. is not to honor it, but in actual practice these men did honor it, that is the thing that we are enquiring about here, if the Court pleases. What happened out there on that job in Kentucky? We are not trying the different policies of the A. F. of L. or any other international union. What happened. It is a simple problem. The men who were there can then testify what happened there on that day.

Mr. Robertson: If Your Honor please, I stated in my opening statement that I expected them to deny anything we did was right or anything they did was wrong. Now there is going to be a conflict of testimony here. We are going to have testimony which would lead you to believe there was no picket line there, and there was no question of a picket line, but our men were run off by threats of force and violence. I ask this witness here from what he knows of this situation, if he knows the general policy what would be their general policy. I have a right to do it because they have already said in here that it is a matter of unwritten law to observe a picket line. I am going to show now whether it is or whether it is not in circumstances like this.

page 744 } Colonel Harris: The undisputed evidence already shows from the testimony of the President

Frank Dixon.

of the Plaintiff that there were three picket signs out there which he picked up, one he threw in the bushes, and he has brought the others here. There isn't any question about that. The plaintiff himself has testified to that. That is the *alter ego* of the plaintiff, the man whom they say owns all the common stock. They are asking this witness to speculate as to what would have been the policy of the A. F. of L., and I respectfully submit that what we are interested in is not what would have been the policy but what actually happened.

Mr. Robertson: If Your Honor please, how can he talk about uncontradicted testimony when we haven't had a chance yet to put the case in? I expect his witnesses to say there was a picket line there like the iron curtain and that we honored it. I expect our witnesses to say no such thing. I think on the evidence that is in here now I say if some responsible person or any person goes and sticks up one picket sign at the office and goes a mile and a quarter down to the school house and sticks up another thing like that out in the bushes and then goes a mile and a half back to the tippie, that that does not constitute a picket line.

The Court: I will overrule the objection and allow the evidence for what it is worth.

Colonel Harris: We reserve an exception.

page 745 } By Mr. Robertson:

Q. Do you know the policy of the A. F. of L. regarding honoring picket lines?

A. Yes, I would be glad to answer that. Take, for instance, where there is a jurisdictional dispute between maybe we will say that my craft and another craft affiliated with the A. F. of L., of course our people would recognize that picket line, but in this instance where we are talking about the Breathitt County job—that seems to be the case here—I will say to you that our international and our people does not recognize such a picket line as that because that picket line was put up there for the purpose of trying to force our membership to give up their card in their brotherhood and join a dual organization which in our general constitution it says that you shall not join, give aid, comfort or support to a dual organization, which the United Construction Workers is a dual organization to our organization. I think that answers your question. We would not under any circumstances recognize a picket line set up there, which has been illustrated I think here if I might use the attorneys' language here, a

Frank Dixon.

piece of paper stuck up some place on a rock or nailed up on a tree. We wouldn't recognize such a sign as that anyhow. A man would have to be carrying a picket sign to and fro across the site of the job or something before the men would.

Then of course it is left up to the man's own
page 746 } choosing as to whether or not he would cross that picket line. Another thing is, in this case here, with the Laburnum Construction Company on the Breathitt County job, I was in the meeting and told these men as far as my orders to them they were that they were to return to work and to continue because they had a contract with the Laburnum Construction Company to finish that job. In the meeting they told me definitely that they were not going to work under those circumstances.

Colonel Harris: We object to what happened in a private meeting that none of the defendants were present at, and the only meeting I have heard about here was one in which Mr. Hart waited 45 minutes and after being invited to come there they wouldn't let him in. So we object to bringing testimony to this jury of something that happens in a secret and private meeting of their own.

Mr. Robertson: If Your Honor please, Mr. Dixon was a little ahead of what I am trying to develop there, but to relieve my friend's lack of knowledge, we are talking about the Salyersville meeting on August 2, where Mr. Bryan made the speech and tried to get the people back to work and we are going to come to that in due course.

The Court: I overrule the objection.

Colonel Harris: We reserve an exception.

page 747 }

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By Mr. Robertson:

Q. I think you have already said that you are familiar generally with the facts of this case.

A. That is right.

Q. Do you know a man named Tom Raney, who lives in Pikeville, Kentucky?

A. I don't know Mr. Raney personally.

Q. Do you know who he is?

A. Yes, I know he has some kind of official capacity I guess probably like myself. He is probably international represen-

Frank Dixon.

tative for the United Mine Workers.
page 748 } Q. Since this case was set for trial has Mr. Raney sent you a message that if your witnesses from the Paintsville area would not testify, you wouldn't have any more trouble out in Eastern Kentucky?

Colonel Harris: We object to that statement: Mr. *Raney* has no authority and no authority is shown from any one of the defendants to engage in any discussions of that sort. If he did, he stepped outside of his agency.

Mr. Robertson: That doesn't make any difference to us, Your Honor. The undisputed testimony thus far is that Tom Raney is a member of the International Executive Board of the United Mine Workers of America, that he did whatever duties were assigned to him by Mr. John L. Lewis, that he lived in Pikeville and maintained an office there.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. Have you received a message such as I have mentioned in my question?

The Court: As him what message he received.

Colonel Harris: Judge, I am not familiar with the Kentucky practice. In the other states in which I practice if I object to a question and counsel repeats it then I have to repeat my objection, and the custom is to let the stenographer read it in order to preserve the objection and the
page 749 } exception. Is that the rule up here?

The Court: That is a question that you gentlemen will have to determine for yourselves as to how you want to save your point, but the Court will be very liberal with you in that respect, and you rise at any time you care to to save your point.

Colonel Harris: I want to conform to the Virginia rules, and every time he repeats his question I will have to repeat the objection.

Mr. Robertson: I would say that the general practice is just to have a continuing objection to the entire line of testimony.

The Court: That is done frequently, Mr. Harris.

Colonel Harris: But some of these questions will be different, and at the time he asks them will suggest the specific

Frank Dixon.

and precise objection that applies to it, and if I put in a general objection and I come to read them I probably wouldn't get the same idea. So I prefer to state my objection.

The Court: You feel free to state your objection at any time, Mr. Harris.

Colonel Harris: Thank you, sir.

By Mr. Robertson:

Q. What message did you receive from Tom Raney?

Mr. Harris: Same objection, if the Court please.

The Court: Go ahead and answer.

page 750 } The Witness: I received a message in a round-about way that Mr. Tom Raney wanted to meet with me and suggested that we meet and talk this matter over and we would arrive at some kind of settlement where the United Construction Workers would lay off the carpenter work in the eastern part of the state, and the understanding was that I was to get hold of my men at Paintsville and keep them from testifying in this case, that they just couldn't afford to have the carpenters testify in this case in Richmond.

Colonel Harris: We move to exclude that because the witness says that he got that in a round-about way, and nobody can possibly tell what is meant by a round-about way. That means it did not come directly from Tom Raney, and I think if a man comes in and says I got a rumor or a round-about report, they should be more specific and lay a better predicate for it.

Mr. Robertson: Just a minute before you rule, if Your Honor please. If you want to ask him, the round-about was in a way that the person giving the message won't get hurt physically through violence. If you want to pursue that I will pursue it right now.

Colonel Harris: I challenge the definition. I never heard that round-about meant that you weren't going to get into a fight. That is a new definition of round-about, to me anyway.

page 751 } By Mr. Robertson:

Q. What do you mean by what you said?

A. The way the message came to me this man happens to hold a pretty high position in the labor movement in Kentucky, and of course the way the message was delivered to me was that "I don't want you to say anything about this to anybody else. I ate lunch with Tom in a certain city and he talked this matter over with me and suggested that I come down here

Frank Dixon.

and get hold of you and see if you want to get in conference with him." I started to interrupt there a minute ago and try to make a clear explanation to that effect. Probably Tom didn't know me and doesn't know my address. I guess the attorney might object, but I will say I am glad of it.

The Court: Gentlemen, disregard that last statement.

Colonel Harris: I don't move to exclude his statement that he is glad of it because it shows his personal ill-will toward Mr. Raney, and I think the jury is entitled to know it.

The Court: I thought you were rising for the purpose of asking the Court to disregard that statement.

Mr. Robertson: I am going to ask that they do regard it.

By Mr. Robertson:

Q. Mr. Dixon, has your life been threatened since this case started on account of your connection with the case?

page 752 }

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page 753 } (The following proceedings were had in chambers.)

(The last several questions and answers were read by the reporter.)

Mr. Mullen: I think he should go back to the point where objection was made to his saying that.

Mr. Robertson: Let me add this here, because I didn't feel that I should say this in the presence of the jury. What he means by "around-about way" is that that man, if he reveals his name, thinks his life would be in danger, and the man was afraid not to deliver the message, and he was afraid to deliver it for fear that his name would leak out. He says that if it becomes known, that that man's name was mentioned in this case, it will cost him his life.

Wait a minute, I haven't finished.

I told this man Dixon that I would not ask him on the stand to reveal that name, for that reason.

Mr. Mullen: We will.

Colonel Harris: We certainly will.

Mr. Robertson: That is up to you and him and the Court.

Frank Dixon.

Mr. Mullen: You are making a very serious charge.

Mr. Robertson: I am.

Mr. Mullen: On the basis of hearsay. The man who he claims told him isn't even willing to back it up by having his name stated.

Mr. Robertson: It is a rough case, and I have page 754 } done my part now. If it comes out through you all, that is—

The Court: What observation do you have to make, Mr. Allen?

Mr. Allen: If it please Your Honor, I suppose it will be conceded on all sides that you have a difficult problem here. It is exceedingly difficult any way you go about it, but the case itself makes it difficult. We are willing to be guided by any instructions to counsel that Your Honor may think are fair, but I think this should be borne in mind first, last, and all the time: according to the nature of the case itself, we certainly have a right to bring out the conflicting jurisdictions, so to speak, between these two unions. We have certainly got a right to bring out the antagonisms between the two unions. We certainly have a right to prove, according to the issues that have been drawn here, that our men left the job because of threats, intimidation, and fear of bodily harm, and not because of their desire to honor a so-called picket line, not because of their desire to join the United Construction Workers because the scale of pay was greater.

How are you going to prove those things? You might say, "You can prove them by proving the practice or the custom or policies of the United Construction Workers to raid people that didn't join their unions." I don't know how page 755 } you are going to get at it. The evidence ought to be confined to somewhat a general nature, and specific instances ought not to be gone into too much unless they bring them out themselves on cross examination.

How are we going to show the motive of these people? How are we going to show that they made up their minds to come there and did run these people off the job by threats, violence and intimidation?

You come back to this man Dixon. He holds a high position in the American Federation of Labor. A man comes to him and brings him this message, and promises him, "I don't want my name mentioned. If my name is mentioned as coming to you about this, I might be killed."

That is right much of detail to go into, it is true, the same way something was brought out about one of the meetings

Frank Dixon.

there, when the man started to mention something that was said at the meeting. It is certain that we have a right to bring out that this representative of the American Federation of Labor, an International Representative, came there and urged these people to go to work, and they refused to go to work because of threats, intimidation and fear. We certainly have a right to go that far.

Then these gentlemen have the right to ask them, if they want to, "what was done or said to show that fear?"

If, Your Honor doesn't think that we have a right to go into that detail on direct examination, limit us to statements to the effect that, "I urged these men to go back to work, and they wouldn't go back to work."

"Why wouldn't they go back to work?"

"They were afraid. They were afraid of being killed."

We have a right to go that far. The question is just how far we have a right to go in order to prove the issues on our side of the case which have developed here. I submit that Your Honor give that serious thought and confine us to the rules which you think give us the right to bring out what we have a right to bring out without an infraction of any rules that are made for the benefit of the defendants in cases of this kind.

Mr. Mullen: If your Honor please, I think we are confusing two things. The question has been asked him as to what he said at a meeting, and that was objected to. There were one or two other questions as to what happened there in Breathitt at the time. They are asking him here about a matter that occurred after the suit was brought, long after the suit was brought, and are asking the witness to testify that Tom Raney tried to prevent a witness from coming here to testify. All his authority for that is that "some man, whose name I can't mention, told me that he talked with Tom Raney, and that is what Tom Raney would like to do; he would like to meet with me to see if we can get together."

It isn't a part of what happened at the time. It is a matter that came up long afterward. Clearly, so far as he is repeating what Tom Raney said, it is hearsay, and he certainly has no right to go on the stand and try to prevent, even if he could testify of his own knowledge, us from asking the source of his message and the authority on which he is making these statements.

Frank Dixon.

If that is going to put a man in jeopardy, they are doing it, not us, and the burden should not be put on us.

The Court: What is the materiality of this question that threats have been made since the alleged cause of action arose?

Mr. Robertson: I can't think of anything that would be more relevant. They are trying to scare us out of proving our case. It just hooks up the whole thing from beginning to end. I can't think of anything more relevant.

The Court: The witness is here testifying what he knows about it.

Mr. Robertson: I have a right to show their efforts to scare us out of proving our case. They are not all here.

Mr. Allen: The materiality is this, Your Honor: It is exactly the same as old Judge Keats said in one of our famous slander cases. Slanders, even after the suit has started, are admissible to show the motive. You can't re-
page 758 } cover on those slanders, but they go back and
show the motive. This is just the aftermath and
continuation of the same sort of thing, and it comes out of
the same atmosphere that they created.

Mr. Robertson: It shows the pattern. The trial of this case has taken the pattern that every one I have ever been in takes. It is the same pattern. I am not talking about counsel. I am talking about on the facts, and the way they try to scare you out of coming to court, the way they try to scare your witnesses out after you get there.

I think it shows, as we have said in our trial brief, a pattern of conduct from before this case right on down through it and right down here into this trial. I think it is a great element of punitive damages.

Mr. Mullen: Assuming that it was material to show that, you are confusing the question of materiality with the method of proof. Speaking of slander cases, and the proof of subsequent slander, it is assumed that they had the proper witness to prove it. The question here is the method that they are trying to follow to prove that Tom Raney, whom this man had never met and never talked to, had said that he wanted to get with him and prevent witnesses from coming here. It is the worst violation possible of the hearsay rule. They even admit they brought him here on the promise that they wouldn't ask him who told him.

page 759 } Mr. Robertson: That is right, but I have no
right to bind you.

I say this, Your Honor: It is perfectly obvious that this

Frank Dixon.

message came to this man as the official of the union, and it was up to him to receive it and act upon it as an official of the union. He got it in the routine performance of his duties. When we get to where we want to go into particulars, they say, "Let's confine ourselves to generalities." When we try to stick to generalities, they say, "You must give us the particulars." They can get them if they want them.

Colonel Harris: May I say a word, Judge?

The Court: I will come back to you, Colonel.

Mr. Moore: I would like to bring to Your Honor's attention the language of the Virginia Courts concerning this situation in the case of *Troglon v. Commonwealth*, 31 Gratt. 862, where the Court cites from Judge Story as follows:

"The question was one of fraudulent intent or not, and upon questions of that sort, where the intent of the party is the matter in issue, it has always been deemed allowable as well in criminal as in civil cases to introduce evidence of other acts and doings of the party of a kindred character, in order to illustrate and establish his intention. Indeed, in no other way would it be practicable in many cases to establish such intent or motive; for the single act taken by it-
page 760 } self may not be decisive either way, but when
taken in connection with others of the like character and motive, the intent and motive may be demonstrated almost with absolute certainty."

That is how we think it is relevant and admissible, because if they intimidate this man as far as testifying in the case goes, it certainly shows they went at least that far and probably farther in intimidating a large group of them to the extent of running them off the job.

The Court: All right, Colonel Harris.

Colonel Harris: If the Court please, counsel for the Plaintiff keep saying and trying to leave the impression on the Court that this is a rough case.

Mr. Robertson: What kind of case?

Colonel Harris: To me, it is a powder puff case. There is no evidence that any single human being lost even a tiny little bit of skin. Nobody had their toes stepped on. Nobody was pushed over. Nobody was hurt. From the beginning of this puffed-up lawsuit to the present time, nobody has been hurt.

Now they come in and try to create the impression on this Court that they are so anxious to save this man down in Kentucky. If he were sent by Tom Raney, don't you know Tom

Frank Dixon.

Raney knows who it was? It is absurd to come in here and go through all that rigmarole as if they were trying to protect the man's life. If he came from Tom Raney, Tom Raney knows who he is. They can't protect him. If Tom Raney sent him and Tom wants to disclose who he was so the people will know that his sympathy is not with the Mine Workers, Tom Raney can tell them.

Mr. Robertson: Tom Raney is a member of your International Executive Board, and you can bring him.

Mr. Mullen: I am talking about, not the facts; I am talking about the question of procedure and the question of law, whether they can prove what they are trying to prove. I am not arguing about whether they can or can't prove it. I am arguing the question of procedural law, that they can't prove it in the manner that they are trying to prove it. It is hearsay.

The Court: Just how far do you think, Mr. Allen, you could go?

Mr. Robertson: As far as we have gone, Your Honor. I don't think any farther.

Mr. Allen: You have reference to this particular incident right here about calling for the conversation between Mr. Dixon and this man, whoever he was, supposed to be sent by Tom Raney?

The Court: Yes.

Mr. Allen: I think Mr. Dixon ought to be allowed to say that he had received threats patterned after those on page 762 ¹/₂ before, even after this suit started, in connection with witnesses. If they want the names and the details, then they should ask for them.

Mr. Robertson: Let me finish here. Isn't this the answer to it? As far as the message from Tom Raney is concerned, I am now through with that. If they want to develop the name, they can develop it. If they want to say Dixon is lying and is unworthy of belief, they can bring Tom Raney here and he can deny it out of whole cloth, and there is the issue that the jury can take or leave.

Mr. Mullen: We are not through with it. We are asking the Judge to rule it out and tell them so. Dixon isn't claiming that he has been threatened.

Mr. Robertson: I haven't come to that yet. I am talking now about the message from Tom Raney. We are going to talk about the other thing in a minute. I thought you wanted to dispose of this first question first.

Frank Dixon.

Mr. Mullen: I do, but Mr. Allen brought up that Raney had threatened him.

Mr. Robertson: He didn't say that. You misunderstood him, Mr. Mullen. We said this, that Tom Raney sent him a message and said, "I want to get together and make an agreement with you that you call off your witnesses from Paintsville, and we won't worry you any more in Eastern Kentucky." That is not a threat. That is an over-
page 763 } ture to buy off the witnesses.

What I am going to tell you about the threat to his life is an entirely different matter, and Tom Raney had nothing to do with that.

Colonel Harris: The fact that they say we can later try to shovel out the mass of irrelevant stuff that they are trying to get in doesn't require the violation of the rules of evidence. We still have rules of evidence to determine the admissibility of stuff, and every once in a while they argue that we will get our chance to do so and so. They can't put us to that chance. They have to meet the requirements of the rules of evidence as they go along.

The Court: Is there anything else you gentlemen want to say?

I will overrule the motion, and will allow the witness to answer.

You want to reserve an exception?

Mr. Mullen: We note an exception.

Mr. Robertson: Now, let us take up the other matter. This thing about the threat to his life is an entirely different matter, and Raney has nothing to do with that. I want to develop there the threat that was made to his life.

The Court: Can you foresee any question that is going to be raised when we go back in the courtroom so we can
thresh that out now?

page 764 } Colonel Harris: We are going to object to any claim that this man, this eager beaver, gets on the stand and says that "somebody threatened my life," and thereby poses as a brave man. Of course we will object to it.

The Court: What question are you going to ask?

Mr. Robertson: I am going to ask him, since this case was instituted and since he has been connected with it, has any threat been made against his life; and if so, by whom and in what manner. That is the substance of it. I can't remember the exact wording of it.

Colonel Harris: Your Honor knows that the threat of an

Frank Dixon.

individual member of a union of 600,000 members wouldn't be action for which the union would be responsible.

Mr. Robertson: Judge, let me give you an illustration of it. Suppose the Court were to adjourn this afternoon and John L. Lewis would come to my home tonight and say, "I don't like your tactics in that case, now, and you just dry up and quit them or I will shoot you." Does the Court mean I wouldn't have a right to come back here and tell that to this jury tomorrow as showing the animus and attitude in this thing and the pattern of it from before this occurrence on down through to the present day?

Mr. Mullen: No, we wouldn't say that, but there you have direct connection. Here you have a go-between.

Mr. Robertson: That doesn't make any difference. Suppose he sent me that message by you; it would serve me just as bad and be just as effective, because I wouldn't want John L. to send me word he was going to kill me. I think he would do it.

Mr. Mullen: He might not be lying, you don't know.

Mr. Robertson: He might be, and the jury could decide on that.

Colonel Harris: If all his arguments are as weak as the statement that he is scared, I think Your Honor can just dismiss them from your mind hereafter.

The Court: Do you care to make any observation on that point, Mr. Allen?

Mr. Allen: No, sir.

The Court: Do you gentlemen care to discuss it further?

Mr. Mullen: No.

The Court: I will allow the question to be asked.

You want to except to it in here?

Colonel Harris: Yes.

page 766 } (The following proceedings were had in open court:)

By Mr. Robertson:

Q. Mr. Dixon—

The Court: Mr. Robertson, it has been indicated to the Court that some questions may be asked that may be embarrassing to some people, and it is entirely up to you whether you want to stay in the Court or not. All right, you may proceed.

Frank Dixon.

By Mr. Robertson:

Q. Mr. Dixon, since you have been connected with this case have any threats been made against your life and if so, by whom and in what manner?

A. I will have again to say in a round-about way the word has been sent on to me by various people that I had better keep my ass out of the eastern part of the state.

Mr. Harris: We move to exclude the answer on account of the fact that the witness again makes use of the device "round-about way."

The Court: What do you mean by round-about way, Mr. Dixon?

The Witness: I am trying to refrain from bringing somebody else into this case because bodily harm might come to them by using their name.

The Court: Did somebody tell you or what?

The Witness: It goes back to the conversation page 767 } that happened at Ashland, Kentucky and the same thing was brought to me there from the same party, that Mr. Raney had offered to meet with me to make a deal with me, and if we did allow these men in Paintsville to testify I had better keep my ass out of the eastern part of the state.

Colonel Harris: We object.

Mr. Roberson: Let him finish, please.

Colonel Harris: I thought he was through. I beg your pardon.

The Witness: I have finished if that is a satisfactory answer.

Colonel Harris: You want to find out from him if that is satisfactory?

The Witness: I beg your pardon. I didn't say it was satisfactory to him. I was waiting to see if he was going to ask me anything further pertaining to it.

The Court: Had you completed your statement?

The Witness: Yes, I finished the statement.

Colonel Harris: We ask the Court to exclude from the jury this evident attempt to create the impression that he is protecting somebody, because if a man came to him who was sent by Tom Raney, Tom Raney knows that man's name. It isn't a secret known only to this man that he is protecting. If anybody connected with the union sent that man there, the man connected with it knows his name and it isn't any page 768 } secret from him.

Mr. Robertson: If Your Honor please, and

Frank Dixon.

also Tom Raney is a member of the International Executive Board of the United Mine Workers of America, living at Pikeville, Kentucky, and they can bring him here if they want him. All that he is saying here now is precisely what your Honor has already ruled on in Chambers and he is just repeating it here in the presence of the jury. The Court has already ruled that these questions may be asked.

Colonel Harris: Since Your Honor made a ruling, this witness has been trying to make satisfactory answers for Mr. Robertson.

The Court: That will be a question for the jury to appraise the testimony. I overrule the objection.

Mr. Mullen: We reserve an exception.

By Mr. Robertson:

Q. In connection with that threat did they make any reference to you about Big Sandy River and Tug River?

Colonel Harris: May we have an objection to all questions along that line and an exception without taking up time delaying the case?

The Court: Yes.

The Witness: The threat was sent to me again that if I testified and permitted these men in Paintsville, the carpenters in Paintsville to testify, that all the damned page 769 } water and gravel in the Big Sandy River wasn't going to fill me up if they ever caught me in the eastern part of the State again.

By Mr. Robertson:

Q. Does what happened in Breathitt County conform or differ from the pattern of behavior of the United Construction Workers in other parts of eastern Kentucky?

Colonel Harris: We will have to add that that calls for an unauthorized conclusion of the witness and we don't know with what he is comparing.

Mr. Robertson: I am comparing it with other instances where they have been run off the job. There have been some of them already mentioned here, Wheelwright, Kentucky. Somebody else called them. There are four or five of them. I can't remember them all. As I understand the law we are entitled to show a general pattern of conduct a reasonable length of time before the Breathitt County occurrences and a reasonable length of time after the Breathitt County occurrences to show whether this Breathitt stuff was part and par-

Frank Dixon.

cel of a general pattern used by these defendants to enforce their will.

The Court: I overrule the objection.

Colonel Harris: We reserve an exception and may we add, Judge, to that exception that they don't specify the date, they don't specify the time, *the* don't specify the place, page 770 } and they don't specify the industry or business that was involved.

The Court: Are you going to follow this question with one specifically showing those things?

Mr. Robertson: I hadn't intended to but I do now intend to.

By Mr. Robertson:

Q. Mr. Dixon, does what was done in Breathitt County, Kentucky conform to or differ from the general course of conduct as you have known it in similar instances in Kentucky?

A. It did, and it does.

Q. Did it conform or differ?

A. There has been a number of jobs that our people have been run off of: Wheelwright, Kentucky, Prestonburg, Kentucky—

The Court: Give the time.

The Witness: If Your Honor please, I don't really—I will say within the past year. I can do it that way. I would have to go back to my records and reports to the International office to get those dates.

The Court: Give the approximate times.

The Witness: It was in the summer at Prestonburg Kentucky, where we had a contract with a contractor. I don't just remember the name. That was a job where we built a dam on the Big Sandy River. There was a graveyard above the dam where they would have to be moved. Our page 771 } contract called for removing those bodies and making caskets. The graveyard would be removed to higher ground. The members of the Prestonsburg local union had a contract with this company—I just can't say the name of the company—and the United Construction Workers run our carpenters off that job. We had another contract at Wheelwright, Kentucky to do the carpenter work and wheelwright, and they were ran off that job. We had another job that was being built in Barberville, Kentucky, an armory for the State of Kentucky, and our people were run off that job.

Frank Dixon.

We had a job at Lynch, Kentucky, building a washer and coal tipple, and the men were run off that job.

Those are the jobs that I specifically know something about because the local unions had called me in to their districts, and my assignments from the international office took me in there to investigate and find out what the trouble was, and those are the conditions that I found when I got into the territory.

Mr. Robertson: The witness is with you.

CROSS EXAMINATION.

By Mr. Harris:

Q. You say it conformed to these instances where other people were run off. In those other instances were the cases in which no single member of your union got as much as a scratch?

A. I would answer that in this way, that their page 772 } lives were threatened.

Q. No. I asked you the question, was it the case in these others that you mentioned where no single member of your union got as much as a scratch?

A. I might answer that by saying we didn't give them a chance to because we left the job without anybody being injured.

Q. Every time—

A. In other words, we left the job before we would allow any of our people to be injured over the job.

Q. All United Construction Workers have to do is to come in and say we want you to git, and you git, is that the idea?

A. No, sir. When there is at least 50 or 75 men or 100 men come to a job and go to a small building and just crowd up into the door and tell you that by God you are going to belong to our organization or you ain't going to work here, and we probably have only 10 or 15 or 20 men on that job, they certainly haven't got any room to protect themselves.

Q. You know you had more than any 10 or 15 or 20 men on the job of Laburnum Construction Corporation, don't you?

A. We had quite a few men on that job. I don't just remember how many. But those men were scattered from the top of the mountain to the bottom of the mountain.

Q. Don't you know you had 64 men on this work?

A. Even so there would be 64 of our men on the page 773 } job, those men were scattered over a large area, and I don't suppose there were more than, we will

Frank Dixon.

say the largest number of them that could be together would be around 15 of them.

Mr. Robertson: Let him finish, please, Mr. Harris.

Colonel Harris: I thought he had answered my question. He might have been making a speech that I wasn't listening to.

The Witness: You certainly were asking the question.

The Court: Did you finish answering the question?

The Witness: Yes.

The Court: I understood you had. Go ahead, Mr. Harris.

By Colonel Harris:

Q. Do you claim to this jury that the carpenter helpers and common laborers on the Laburnum job were members of the carpenters union?

A. They were not, the laborers and carpenters helpers, members of our organization, but they had made applications to join our organization.

Q. That was after the United Construction Workers came in to try to organize them, wasn't it?

A. I beg your pardon.

Q. When did they make application?

A. I gave personally to one of the men—I can't recall his name—in the Paintsville Local Union a large
page 774 } number of application blanks, I would say roughly
it would have been around the early part or
around the middle part of July, around about the early part
of July.

Q. What do you mean by the early part of July?

A. I would say roughly—I am not specifically stating any dates because I didn't have no occasion to have to remember the date of that meeting. I was attending a meeting of their local union, and the question was brought up that the laborers and the carpenter helpers wanted to organize on the Laburnum Construction Company job. I said, if that is the case your general constitution says you handle your own materials of members of your organization. Sign these men up and put them into your organization as carpter helpers.

Q. Do you remember the question I asked you?

A. That is the question you asked me.

Q. Didn't I ask you what you mean by the early part of July? Wasn't that what I asked you?

A. I believe I answered your question.

Q. I didn't hear any dates given.

A. I didn't give you any dates.

Frank Dixon.

Q. Give us one.

A. Exact date?

Q. Give us one, please.

A. I am unable to give you the exact date of that meeting.

Q. By the early part of July do you mean before the 10th of July.

A. I would say, yes, around the 10th, somewhere around in there.

Q. All right. Do you mean applied for the membership?

A. Yes, sir.

Q. In the carpenters union on the 10th of July or by the 10th of July?

A. I know that some of the applications were signed around about the 21st.

Q. Oh, they were all signed and dated on the 21st, weren't they?

A. I did not write the applications myself, so there I couldn't say what date they were signed.

Q. Have you seen a single application that bears a date that was not dated the 21st of July?

A. I really haven't saw any of the applications.

Q. You haven't?

A. No, sir.

Q. Now, then, you are an organizer, aren't you?

A. That is right.

Q. Didn't you carry blanks around with you when you were around organizing?

A. Yes, sir. I always do.

Q. You didn't have any blanks when they asked for some out there on the job, did you?

A. Yes, sir.

Q. Didn't you have to send off and get the blanks?

A. No, sir.

Q. Do you mean the first time anybody asked out there for an application blank with the A. F. of L. carpenters union you were able to hand it right out?

A. Yes, sir. If you will let me give you a clear answer of my answer.

Q. No, you answer the question.

The Court: One minute, Mr. Robertson.

Colonel Harris: I asked him to answer my question. I am not willing for him to make speeches. Mr. Robertson will no doubt make them.

Mr. Robertson: Your Honor, I am not calling for any

Frank Dixon.

speeches. We have plenty of oratorical talent. The witness said that he answered the *questio*, yes, and said "I would like to make an explanation." I think the witness has a right to do that before he goes to something else.

The Court: Do you want to qualify that statement?

The Witness: Yes, sir, I would like to in as much as the attorney has asked me a question in such a way that I can't answer the question any more than say yes.

The Court: You may proceed to qualify your statement.

The Witness: I swore to tell the truth and that page 777 } is what I want to say. In this instance where he asked me that question, I certainly answered him yes that I always carry these application blanks with me, and when my membership asked me for those cards we were in a meeting. I can't run around here with a whole pocket full of literature sticking in my pockets as if I was a pack horse or something. I went down to my automobile and got the cards and gave them to him. That is the question I wanted to answer you on. That is the reason I couldn't answer your question the way you asked it because you asked the question, didn't I have the applications cards with me.

By Mr. Harris:

Q. You stated to this jury a while ago that you didn't regard that those three signs informing the public that there was a strike there—didn't regard that as a picket line.

A. Certainly not, sir.

Q. You also would tell this jury, would you not, that if there had been a picket line you wouldn't have paid any attention to it?

A. Right.

Colonel Harris: That is all.

Mr. Robertson: I have no other questions.

The Court: Stand aside.

(Witness excused.)

Mr. Robertson: Mr. Weaver P. Freeman.
page 778 } The Court: Do you want this witness to go outside? Are you going to put him back on?

Mr. Robertson: Not as far as I know, Your Honor.

The Court: If he stays in, there will be a question about his testifying again.

Mr. Robertson: He had better go out, then. I can't look into a crystal ball.

The Court: The previous witness will leave the room, then.

Whereupon,

WEAVER P. FREEMAN,
called as a witness on behalf of Plaintiff, having been first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Freeman, is your name Weaver P. Freeman?

A. That is right.

Q. Where do you live?

A. Louisville, Kentucky.

Q. How old are you?

A. Fifty-three.

Q. Where were you born and raised?

A. Harrisburg, Kentucky.

Q. How far is that from Breathitt County?

A. Probably 100 miles, roughly.

page 779 } Q. Are you connected with the American Fed-
eration of Labor?

A. I am.

Q. What is your position with that union?

A. I am an International Representative of the Carpenters.

Q. What are the duties of your position?

A. It covers a multitude of things, good will ambassador,
troubleshooter, and various things that might have to be
settled in our organization.

Q. How long have you occupied your present position with
the union?

A. About six years the last time.

Q. On the 28th of July, 1949, that calendar shows was
Thursday. Were you in Salyersville, Kentucky, on that date
in connection with the trouble that the Laburnum Construction
Company was having in Breathitt County?

A. I don't know whether it was actually in that connection.
I think I had been over to Paintsville and stopped in Salyers-
ville, if this is the time you are having reference to, the time I
was talking to Mr. Delinger.

Q. On that occasion, did you phone Mr. Bryan in Hunt-
ington while you were in Salyersville?

A. I did.

Q. What was the occasion for your seeing Mr.
page 780 } Delinger at that time?

A. I came into town and I parked my automo-
bile, and Mr. Delinger was standing on the sidewalk. We went

Weaver P. Freeman.

up to his hotel room, and he told me of the difficulties that he was having over on the job. I had already heard about it through various people. I wouldn't be able to name them, probably, right now, but you know how it gets around.

He asked me if I would talk to Mr. Bryan—

Colonel Harris: We object to any hearsay conversation, if the Court please.

Mr. Robertson: I can bring this right to the point. It is the same thing the Court has ruled on before.

By Mr. Robertson:

Q. Did Mr. Delinger tell you, or not, that his life had been threatened?

A. He told me that they had sent him word to get the hell over there and get what few rags he had and get the hell out and stay out.

Q. Did you convey that message to Mr. Bryan in your telephone conversation?

A. I certainly did.

Colonel Harris: May we have an objection to all the questions along that line, and an exception, Judge?

The Court: The record will show your objection and exception to this line of examination.

page 781 } By Mr. Robertson:

Q. Did you attend an A. F. of L. union meeting in Salyersville, Kentucky, on the 2nd day of August, 1949?

A. I did.

Q. What was the purpose of that meeting?

A. It was a group of building trades representatives, myself as an International Representative of the Carpenters. We had a meeting with Mr. Bryan, and as the International Representative of the Carpenters, he insisted that I would send my members back in there on that job. He told me that he had a contract with us; for us to furnish them with carpenters. And I told him that didn't make any difference what kind of contract he had; that under no condition would I send my membership back in there where I wouldn't go myself.

.

Q. What was the conversation between you and Mr. Bryan about whether you would or whether you wouldn't? Just

Weaver P. Freeman.

give us the whole conversation. Don't pull any punches on what was said.

page 782 } A. My local unions work under local autonomous charter, and by that they make their own rules and regulations and their own by-laws, and decide as to who they will work for and who they won't work for, and the conditions they will work under. By that, I wouldn't even advise them to go back, knowing the conditions that existed.

Q. Did you and Mr. Bryan have any words over that?

A. Why, yes, I guess it was a pretty heated argument.

Q. What did you tell him and what did he tell you? Don't mind the ladies; just go ahead. We told them to go out if they didn't want to hear it.

The Court: Go ahead and answer the question.

The Witness: Well, I—they told us, they told my membership if they went back there they were going to shoot their ass off, if that is what you are asking for.

By Mr. Robertson:

Q. That is what I am asking for. Did you have any talk with Mr. Bryan about the difference in the situation in Kentucky and in Richmond?

A. Yes. I told him—he told me about the contract and everything, and I said, "Yes, that contract is in Richmond, but this is down in Breathitt County, Kentucky, and there is a hell of a lot of difference between Breathitt and Richmond." I think it was something like them words that I used.

Q. When he kept on telling you what he knew about it, what did you tell him to do about it?

page 783 } A. I told him from past experience and what I had read in the newspapers, they would do just exactly what they said they would do.

Q. Did you tell him anything about he didn't know—

A. Yes, I told him as far as going back there and putting on a pair of overalls and leading a bunch of men back there, he didn't know his ass from a hole in the ground.

Mr. Robertson: The witness is with you.

CROSS EXAMINATION.

By Colonel Harris:

Q. Do you live out in Kentucky now?

A. I live in Louisville.

Weaver P. Freeman.

Q. Louisville, Kentucky?

A. Yes, sir.

Q. How much did they agree to pay you to come here today?

A. How much did who agree to pay me to come here today?

Q. The Plaintiff that you are testifying for?

A. Nothing. The International Brotherhood of Carpenters pays me for my traveling, sir.

Q. And you are not looking to the Laburnum Construction Company or Mr. A. Hamilton Bryan for any compensation?

A. Absolutely not. I am on my own, brother.

page 784 } Q. Your visit here today is just a part of a broad fight between your union and the United Construction Workers?

A. I would assume so, for I am here on assignment from my International Office.

Q. Yes. How long have you been fighting the United Construction Workers?

A. Well, we have had a little trouble with them right along, ever since I have been on this job. The first trouble I ran into with them was at Barbourville, Kentucky, when the J. D. Jennings Company out of Louisville—

Q. I didn't ask about that. I asked him how long.

Mr. Robertson: If Your Honor please, I am going to ask him to read the question. He is answering the question that was asked.

The Court: Read the question back.

(The pending question was read by the reporter.)

The Court: Answer that question.

The Witness: About two or three years, roughly.

By Colonel Harris:

Q. You say you have been an organizer this time about six years?

A. Did I say "organizer"?

Q. I beg your pardon. You didn't. You said you had been with the union six years this last time. How long were you with it the first time?

page 785 } A. About 14 or 15 months, and I was lent to the American Federation of Labor for the three war years, and then went back with the Carpenters.

Q. How long have you been a member of the Carpenters Union?

Weaver P. Freeman.

A. Since 1921.

Q. Have you maintained your membership constantly all that time?

A. If I hadn't, I wouldn't be an International Representative.

Q. In your talking with Mr. Delinger, did you name anybody there on the job that had been shot?

A. No, I didn't know—

Q. Did you tell him anybody on the job that had been hit?

A. No.

Q. Did you tell him anybody on the job that had had their foot stepped on?

A. No.

Q. As a matter of fact, there wasn't a single living person that received any physical injury whatsoever out there, was there?

A. They used good judgment.

Q. Will you answer my question, please, sir?

The Court: Answer the question.
page 786 } The Witness: No.

By Colonel Harris:

Q. This terrible reputation that Breathitt County has—the people in Breathitt County had that reputation long before July, 1949, didn't they?

A. Yes, it dates back as far as 1900. We have a statue of a Governor standing in front of the Capitol now, from some of their outlaw activities up in that section of the country.

Q. That wasn't a United Construction Workers fight?

A. It goes to prove that they are not law abiding citizens.

Q. The people, not the United Construction Workers alone, but everybody out there?

A. That is right.

Q. Do you mean to say that all the people on the other side are brave and all the people on your side are cowards?

Mr. Robertson: I object to that, Your Honor.

Colonel Harris: I think that is a fair question.

Mr. Robertson: I say that is a perfectly unfair question to the witness, and is intended to be an unfair question, and I object to it.

The Court: I overrule the objection.

Weaver P. Freeman.

Mr. Robertson: Exception.
page 787 } Colonel Harris: Read the question to him.
please, Mr. Dudley.

(The pending question was read by the reporter.)

The Witness: No, there are no cowards in my family, to answer the question in that respect, but I think our people just aim to use good judgment, as I said before, if that answers the question.

By Colonel Harris:

Q. As a matter of fact, those people out in Breathitt County, in fact, all over Kentucky, have a reputation for being brave men and fighters, don't they?

A. That is right.

Colonel Harris: That is all.

Mr. Robertson: I have no other questions.

The Court: Stand aside, Mr. Freeman. That is all.

(Witness excused.)

Mr. Robertson: If Your Honor please, our next testimony is the deposition of a man named Henry Starr which was taken out in Kentucky. He could not come here, and I am going to ask that I be permitted to take the stand and read the answers to the questions, and Mr. Allen read the questions.

Mr. Mullen: If Your Honor please, objections to a large number of the questions have already been filed with Your Honor.

page 788 } Mr. Robertson: You may object to them as they come along.

The Court: I am wondering if we wouldn't save some time if we conferred in chambers.

Mr. Robertson: I don't think you would. I don't think there are many objections to them. I won't read the answers if they object.

Mr. Mullen: I think we would save a great deal of time. The objections are written out. We could go over them right quick.

The Court: How long do you think it would take, Mr. Mullen?

Mr. Mullen: I don't know, Judge, because I don't know how

Henry Starr.

much argument there is going to be on the objection after it is made.

Mr. Robertson: I suggest we go along and see how far we can get, and then if we come to an objection, if there is any difficulty on ruling on it, then we can adjourn to chambers.

The Court: Let's go on to the first objection, and then I can see.

page 789 } (At this point the deposition of Henry Starr was read to the jury, Mr. Allen reading the questions and Mr. Robertson reading the answers, as follows:)

"The witness,

HENRY STARR,

being first duly sworn by Alice Lyon, a Notary Public for the County of Johnson, in the State of Kentucky, testified as follows, to-wit:

"The signature and seal of said notary waived by agreement of parties hereto.

"DIRECT EXAMINATION.

"By Mr. Robertson:

"Question 1. Mr. Starr, what is your full name?

"Answer. Henry Starr.

"Question 2. How old are you, Mr. Starr?

"Answer. I am fifty-four years old.

"Question 3. Where do you live?

"Answer. Here in the City of Paintsville.

"Question 4. Were you born and raised in this general neighborhood, Mr. Starr?

"Answer. No, sir. I was born and raised in West Virginia.

"Question 5. What is your address here in Paintsville?

"Answer. Depot Street.

"Question 6. What is your occupation?

"Answer. Carpenter.

"Question 7. Are you a member of any union?

"Answer. Yes, sir.

"Question 8. What is that union?

page 790 } "Answer. Carpenter's union, Local 646, affiliated with A. F. of L.

"Question 9. Is that a local here in Paintsville?

"Answer. Yes, sir.

Henry Starr.

"Question 10. Are you an officer in that union at the present time?

"Answer. Yes, sir.

"Question 11. What is your office?

"Answer. Business Agent and Treasurer.

"Question 12. For how long?

"Answer. I have held the position of Treasurer for three years. This is the third year, beginning July 1st.

"Question 13. And you were Treasurer of your Local in July 1949?

"Answer. Yes, sir.

"Question 14. Did you hold any other office then?

"Answer. No, sir, not then.

"Question 15. How long have you been a member of said union?

"Answer. Since 1940, August 17th.

"Question 16. Mr. Starr, did you ever do any work for Laburnum Construction Corporation at Evanston, Kentucky?

"Answer. Yes, sir.

"Question 17. What kind of work did you do there?

"Answer. Carpenter foreman.

"Question 18. What County is Evanston in?
page 791 }

"Answer. Breathitt County.

"Question 19. Is that County sometimes called
"Bloody Breathitt"?"

"Answer. That is what they call it, yes, sir.

"Question 20. How did it get that name, if you know?"

"Answer. Because there was so much willful murder done there. If someone got mad at someone they would go out and have a feud.

"Question 21. How far is Breathitt County, Kentucky, from Harlan County, Kentucky, if you know?"

Mr. Robertson: There is an objection to that.

Mr. Mullen: We will waive that objection.

(The reading of the deposition continued as follows:)

"Answer. I wouldn't know just exactly.

"Question 22. What kind of work was Laburnum Construction Corporation doing at Evanston in the month of July, 1949?

"Answer. We were building a coal *tripple* and preparation plant and houses, and also a school house, we had under construction at that time.

Henry Starr.

"Question 23. I believe Laburnum Construction Corporation had another company of the same ownership that was doing some of the work there at the school house?

"Answer. Laburnum Construction Corporation was doing it all.
page 792 }

"Question 24. About how many members of your local were doing that carpenter work there at Evanston; approximately?

"Answer. I think we had thirty-four or thirty-five carpenters on the job there out of this local.

"Question 25. Would that include the school house and also the tipple and coal preparation plant?

"Answer. That would include all the carpenters on the job for Laburnum Construction Corporation.

"Question 26. I will ask you to describe the construction of the tipple there and what was at the tipple and what was at the head house and how those two units were connected?

"Answer. The main tipple built at the bottom of the hill was to receive all the coal, and we had a lot of construction work going on at the top of the hill so the coal could be sent down the hill on the button line.

"Question 27. Was that operation known as Pond Creek Pocahontas Company's Mine No. 1?

"Answer. Yes, sir.

"Question 28. Was that a shaft mine, or a strip mine?

"Answer. Strip mine.

"Question 29. You mentioned doing some work on the school house, approximately how far was the school house from the tipple?

"Answer. Approximately a mile and a quarter.

page 793 } "Question 30. How far would you say Evans-
ton is from Paintsville by road?

"Answer. I think the car registered fifty-one miles.

"Question 31. And how far was that operation from Salyersville, Kentucky, in Magoffin County?

"Answer. It is eighteen miles from here to Salyersville.

"Question 32. What kind of country is it up there where that operation is?

"Answer. It is mighty rough country.

"Question 33. Was it wooded right down to the operation?

"Answer. Yes, sir, until we cleared it out.

"Question 34. How close would you say the brush and woods came down to the tipple and school building there?

Henry Starr.

"Answer. I would say we cleared off, or the Company cleared off the right-of-way, and I would say they cleared off a hundred foot lane for the button line up the hill, and on the hill they cleared off a place for the water tank.

"Question 35. Is the tipple in a little pocket there?

"Answer. It comes off of a point.

"Question 36. And how far was the woodlands away from the school house?

"Answer. It is approximately a hundred feet up to the woods in some places and in some places not so much.

"Question 37. Do you know where the United Mine Workers of America operate in that vicinity?

"Answer. Yes, sir, they are working around page 794 } there in the mines and it is a fact they would be organized in there.

"Question 38. Do you know whether the United Mine Workers of America were organized in there at that time?

"Answer. They were not as I know of at that time.

"Question 39. How long had your Local 646 been operating there before July 25, 1949?

"Answer. We went there in November, 1948, when we signed a contract and went to work over there.

"Question 40. So that would be approximately eight months?

"Answer. Yes, sir."

Mr. Robertson: There is not an objection at this point, but there is something here. Do you want me to read it? If you don't object, I will read it.

Mr. Mullen: I have no objection.

The Court: Let us read only what is necessary.

(The reading of the deposition continued as follows:)

"Question 41: Mr. Starr, did you, as a member and officer of your union, receive reports that United Construction Workers of District 50, Region 28, affiliated with United Mine Workers of America, were going to try to run the Laburnum Construction Corporation's employees off the job there at Evanston?"

Mr. Mullen: If Your Honor please, we have an objection on that. We object to the question on the ground that the purport and nature of any reports received would be hearsay.

Henry Starr.

Mr. Robertson: Your Honor, we say it was
page 795 { information he received in the regular course of
his employment as a union official, and it is ad-
missible.

The Court: I will overrule the objection.

Mr. Mullen: Please note an exception.

(The reading of the deposition continued as follows:)

"Answer. Yes, sir, I did.

"Question 42. Did those reports that came to you come in
increasing frequency or decreasing frequency?

"Answer. Every day or two we would hear a rumor and
they were careful whose name they would attach to it, but it
was official enough that they were aware of it."

Mr. Mullen: If Your Honor please, we object to the ques-
tion and answer because he says it is simply a rumor. He
doesn't say any definite report came to him, that anybody
brought the report, but it is simply a rumor.

Mr. Robertson: We think it is admissible, Your Honor, be-
cause it is information that came to him as an official of the
union, that these people were coming to run them off the job.

The Court: I will allow that.

Colonel Harris: We reserve an exception.

(The reading of the deposition continued as follows:)

"Question 43. You say it was reported to you in your ca-
pacity as a member and officer of the union you represented?

"Answer. Yes, sir.

page 796 { "Question 44. As a result of those reports
which came to you on or about Sunday, July 24,
1949, did you take any action about it?

"Answer. On the Saturday night preceding the Sunday
we had a meeting and we requested our business agent, Mr.
Preston, to be over there on Monday morning.

"Question 45. Was that Mr. Burt Preston?

"Answer. Yes, sir.

"Question 46. Why did you request him to be there on
Monday morning?

"Answer. He was our legal representative in a case like
that and we wanted him there to take care of the affairs and
to keep down any trouble that might arise. We had received

Henry Starr.

reports that the United Construction Workers were moving over there.

"Question 47. Did the carpenters from your Local 646 go to work over there on July 25, 1949?

"Answer. Yes, sir.

"Question 48. Was one Burt Preston there on that day?

"Answer. Yes, sir.

"Question 49. Did the United Construction Workers show up there that day, as you had expected, or not?

"Answer. No, sir.

"Question 50. As an officer of the union you represented, did you get any word during that day that any-
page 797 } thing further would be done by the United Construction Workers?

"Answer. No, sir, not that day.

"Question 51. Did you and your men work all that day?

"Answer. Yes, sir, on Monday, the 25th of July, 1949.

"Question 52. Before you left work on the 25th, did you, as an officer of your union, Local 646, get word that anything would happen there on Tuesday the 26th?

"Answer. No, sir, not that day.

"Question 53. Did you and your men go back to work there on Tuesday the 26th of July, 1949?

"Answer. Yes, sir.

"Question 54. How many men were there that day?

"Answer. I think I had sixteen on the payroll that were working on the tipple and some men borrowed from another job that were working on top of the hill.

"Question 55. Do you know how many carpenters were working on the school house?

"Answer. No, sir, I don't know.

"Question 56. How far was the school house from the tipple?

"Answer. About a mile and a quarter.

"Question 57. What was the regular time for starting to work on the job in the morning?

"Answer. Seven o'clock.

"Question 58. Did you start to work as usual
page 798 } with your men that morning?

"Answer. Yes, sir.

"Question 59. How long did you work?

"Answer. Until the noon hour; twelve o'clock.

"Question 60. And then what happened there at the noon hour?

Henry Starr.

"Answer. We were eating our lunch and some of them were through and I think some were not and I looked out the office window in front and the first thing I knew fifty or seventy-five men came up over the hill all at once, was the first time I knew anyone was there.

"Question 61. Were they walking or in automobiles?

"Answer. They were walking when I seen them.

"Question 62. Did they appear to have anyone leading them?

"Answer. Yes, sir.

"Question 63. Who was that?

"Answer. Mr. Hart.

"Question 64. What are his initials, if you know?

"Answer. W. O., I believe.

"Question 65. Do you know what connection he had, if any, with the United Construction Workers?

"Answer. He said he was an international organizer.

"Question 66. You said you were in the office. What office was that?

"Answer. In the superintendent's office.

"Question 67. Was that at the tipple, or away page 799 } from the tipple?

"Answer. About fifty feet away from where the end of the tipple went up.

"Question 68. You say you saw, in this group of men; how many did you say you saw?

"Answer: Between fifty and seventy-five, when I first looked out.

"Question 69. How many men working for the company were there at the tipple at that time?

"Answer. About eighteen.

"Question 70. So they had you outnumbered four or five to one?

"Answer. Yes, sir.

"Question 71. When you saw them coming, what did you do?

"Answer: I closed up my lunch kit and walked out into the yard and began looking things over.

"Question 72. Where did they come to?

"Answer. They came up in the yard around the tool house, blacksmith shop, and office, all around there, just milling around.

"Question 73. Did any of them get up into any part of the tipple?

Henry Starr.

"Answer. I wouldn't say they did, because the Coal Company asked them not to on account of someone getting hurt and the Company being responsible for the accident.
page 800 }

"Question 74. What would you say about the ages in that group; how old or young or middle aged?

"Answer. Some were middle aged and some were young, sixteen or eighteen years old, and some older, forty or fifty.

"Question 75. Had any of them been drinking?

"Answer: Yes, sir.

"Question 76. How do you know that?

"Answer. I smelled it on them and from the way they acted; they acted intoxicated, in an intoxicated way.

"Question 77. I believe this was Tuesday, July 26, 1949, in the summertime. How were these men in this fifty or seventy-five group dressed?

"Answer. In different ways; some had on overalls and some had on overall pants and some had on jackets and some had on sport shirts.

"Question 78. Did you see whether or not any of them were carrying any guns?

"Answer. Yes, sir.

"Question 79. What did you see along that line?

"Answer. I saw two of them with their shirts come up and guns sticking under their belts.

"Question 80. Did you see any of the others where you could see signs of their guns?

"Answer. Yes, sir, several of them you could see prints of guns under their belts.
page 801 }

"Question 81. Did any of them carry knives? know.

"Answer. I never seen any knives out in the open, I don't know.

"Question 82. Was it an orderly group or disorderly group?

"Answer. Disorderly.

"Question 83. Was there any cursing going on?

"Answer. Yes, sir.

"Question 84. Was that gentle or rash?

"Answer. It was pretty rash.

"Question 85. Would they go through the whole string of cursing you are familiar with?

"Answer. Yes, sir.

"Question 86. Did you hear the words "son-of-a-bitch" used there in that group?

"Answer. Yes, sir.

Henry Starr.

"Question 87. Was that addressed to any particular person, or just general?

"Answer. They said they would run that bunch of sons-of-bitches out of there.

"Question 88. Did you hear the word "bastard" used there?

"Answer. I couldn't say.

"Question 89. How old a man would you say page 802 } Mr. Hart, the leader of the group, was?

"Answer. He looked to be about thirty years

"Question 90. Was he a big man?

"Answer. No, sir, not such a large man.

"Question 91. Did he have anything to say while his group were milling around the tippie there?

"Answer. Yes, sir. I went out and talked with him.

"Question 92. You went out and talked to him as an official of your union?

"Answer. Yes, sir, and as foreman of the carpenters of the company, I felt it my duty to go out and ask him what they meant.

"Question 93. I will ask you to say what he said to you and what you said to him.

"Answer. I went out and asked him what it meant and he said, 'It means we are taking the job over and if you fellows want to sign on the dotted line, you can work and we will go along with you.'

"Question 94. He meant for you to sign on the dotted line for what?

"Answer. To join up with the United Construction Workers, and he said, 'We are going to take it,' and I said, 'That is pretty strong language,' and he said, 'Don't you think I can back it up.'

"Question 95. Did any episode occur that day page 803 } in the tool house at the tippie?

"Answer. I wasn't in the tool house.

"Question 96. How long would you say that Hart and his crowd stayed there?

"Answer. Something like an hour.

"Question 97. Did they say anything else to you that you heard—I am talking about Hart—did he say what would happen if you came back to the job and worked?"

Mr. Robertson: There is an objection there.

Mr. Mullen: Objection was taken to that, Your Honor, on the ground that it is leading.

Henry Starr.

Mr. Robertson: I don't think that amounts to anything. You don't press that, do you?

Mr. Mullen: No, I am not particularly concerned with that. I didn't take this deposition, Your Honor. I am reading what other people did. Neither I nor Colonel Harris took them.

(The reading of the deposition continued as follows:)

"Answer. He said he didn't intend for us to work there.

"Question 98. Did he say what would or what would not happen to you if you went on and worked in spite of what he said?

"Answer. He said he would make it plain that he didn't aim for us to work there; that was their work and they were going to take it.

"Question 99. How long did you say he stayed there?

"Answer. About an hour.

page 804 } "Question 100. And then did this group leave all together or did they just drift away?

"Answer. They drifted away, I think. We left some of them there when we left, standing around.

"Question 101. Did your union's men go back to work after the lunch hour that day?

"Answer. No, sir.

"Question 102. Why?

"Answer. Because we were afraid to.

"Question 103. Why were you afraid?

"Answer. They told us not to, and if we did, they would fish us out of the pond out there.

"Question 104. Did they make that threat to you?

"Answer. They said we were not going to work, and if we went back to work, they would fish us out of the pond.

"Question 105. Was Mr. Bryan there at that time?

"Answer. No, sir.

"Question 106. You didn't see him there at all while you were there that Tuesday?

"Answer. No, sir, I didn't.

"Question 107. After the lunch hour, did your men just leave as they generally did when the day's work was over?

page 805 } "Answer. No, sir, we didn't. After they told us not to work, I asked about gathering up the tools and we would go and gather up the tools and bring them down and not work any more.

"Question 108. And then what did you do?

Henry Starr.

"Answer. I gave orders for all the men to gather up the tools and put them in the tool house and then we loaded up the trucks and cars and jeeps, whatever we were riding in, and came out of there and came home.

"Question 109. Did you order your men not to work that afternoon after the lunch hour?

"Answer. I didn't have to; they were afraid to go back. It was dangerous and I wouldn't have gone back myself.

"Question 110. Was anything said or done about a picket line when Mr. Hart was there Tuesday?

"Answer. Yes, sir. He went out there to put up one and Bill Maynard, of the Coal Company, asked him not to put it up.

"Question 111. And what did Hart do?

"Answer. He took it down. He had it printed on a sign stuck up beside the track there.

"Question 112. Did he leave it stuck up beside the track?

"Answer. No, sir, he took it down and he went over to the road, five or six hundred feet over to the highway, and stuck one up over there against some rocks. He pulled up some rocks and set it up over there at the road.

"Question 113. Did he leave it there?

"Answer. Yes, sir.

page 806 } "Question 114. Did he say anything about any-one crossing that picket line?

"Answer. I didn't hear him say anything about that.

"Question 115. Now, after the men quit work there on Tuesday, July 26, 1949, and went on home, was there any meeting of your Local 646 in Paintsville here as a consequence of what had happened that day?

"Answer. Yes, sir.

"Question 116. When was that meeting?

"Answer. On the night of July 26, 1949, we met down at the City Hall."

.

"Question 117. How many men attended that meeting?

"Answer. About fifty.

"Question 118. What was the purpose of that meeting?

"Answer. To discuss and try to get something done about what had happened over there and what was the best thing to do.

"Question 119. Was that the main place for carpenters to get work around here?

Supreme Court of Appeals of Virginia.

Henry Starr.

page 807 { "Answer. Yes, sir.

"Question 120. If you got run off of that job, where would you work?

"Answer. Just anywhere where they could find a day's work or a job; Ohio, Michigan, or anywhere they could find work.

"Question 121. Were there any outsiders present at that meeting?

"Answer. Yes, sir.

"Question 122. Do you know Mr. A. Hamilton Bryan sitting over there?

"Answer. Yes, sir.

"Question 123. What is Mr. Bryan's connection with Laburnum Construction Corporation?

"Answer. He is General Manager of Laburnum Construction Corporation.

"Question 124. Was he the top man on the job?

"Answer. Yes, sir.

"Question 125. Did he have anything to say about the men in your Local 646 going back to work the next day?

"Answer. Yes, sir.

"Question 126. What was the substance of what he had to say?

"Answer. He asked us to go back to work and he said he would put on a pair of overalls and go first and we told him we would follow him."

Mr. Mullen: One minute, please, What number page 808 { are you on?

Mr. Allen: No. 127. I am going to read No. 127 now.

Mr. Mullen: I have an objection to 125 and 126. You have gone over them. Go ahead.

(The reading of the deposition continued as follows:)

"Question 127. Did he have anything to say as to whether or not he thought anyone would get hurt there?"

Mr. Mullen: If Your Honor please, I object to the question on the ground that any statement made by Mr. Bryan was not in the presence of the defendants and is hearsay.

Mr. Robertson: We claim it is admissible, and the Court already has been letting it in. It shows a state of fear or lack of it, and whether or not the utterance was made.

Henry Starr.

The Court: The objection is overruled.

Mr. Mullen: To save time, if these gentlemen don't mind, I will make the same objection to 128, 129, and 130, and we can dispose of it now. I will just take an exception.

The Court: Let me take a look at these other questions, and then I will pass on them.

(Court examining deposition.)

The Court: I will overrule the objection, and you note an exception.

Mr. Robertson: Read 127 again please, Mr. Allen.

(The reading of the deposition continued as follows:)

"Question 127. Did he have anything to say as page 809 } to whether or not he thought anyone would get hurt there?

"Answer. He didn't seem to think it, but we knew better.

"Question 128. Did anyone make any statement to him along that line?

"Answer. Yes, sir.

"Question 129. Who made a statement to him?

"Answer. Mr. Burt Preston. He told Mr. Bryan he didn't know the situation; that he didn't know it was as dangerous as it was and he wouldn't order anyone to go back to work there and get them killed and have to haul them out of there.

"Question 130. Did he say anything about things being different in Richmond, Virginia, and out here at Evanston in Breathitt County, Kentucky?

"Answer. Yes, sir. He told him if he had trouble at Richmond, Virginia, he could get the police, and over there he couldn't even get the highway patrol to come in.

"Question 131. After Mr. Bryan said he would put on a pair of overalls and lead the men back to work, did the men decide they would go back to work on Wednesday?"

Mr. Mullen: If your Honor please, the objection heretofore filed with the Court on that is on the ground that it is based upon the hearsay statement of Mr. Bryan and the answer states a conclusion of the witness as to what was decided.

Mr. Robertson: If Your Honor please, we page 810 } claim that is the same proposition as before. It all tends to show whether or not the men were afraid to go back to work.

Henry Starr.

The Court: The objection is overruled.

Mr. Mullen: Exception noted.

(The reading of the deposition continued as follows:)

"Answer. They decided they would go back over there and see how conditions were before they went to work. That was Mr. Preston's orders.

"Question 132. Were you to go in a group?

"Answer. We were to meet at Salyersville at a filling station on the corner and we were to proceed from there close together for protection if something happened.

"Question 133. How far is it from Salyersville to the mine, approximately?

"Answer. About thirty miles.

"Question 134. How big a town in Salyersville, would you say?

"Answer. Between 1,300 and 1,500 population.

"Question 135. Are there any other towns of any consequence between Salyersville and where you were working?

"Answer. Just Royaltown with a population of 400 or 500 between Salyersville and the mine.

"Question 136. When you got over to the job on Wednesday morning what was the situation you found there?

"Answer. We met at the time office. We all page 811 } gathered up there.

"Question 137. How far is the time office from the tippie?

"Answer. I would say five hundred or six hundred feet.

"Question 138. Was it in sight of the tippie?

"Answer. Yes, sir.

"Question 139. Now, tell us what happened there on that Wednesday morning of July 27, 1949?

"Answer. We didn't see anyone over at the tippie and the sign was sticking up there at the side of the road, the picket sign, and Mr. Bryan went down and got it and took it in the office and we went over to the tippie and some of the boys went to work.

"Question 140. What did Mr. Bryan do with the picket sign?

"Answer. He took it into the office.

"Question 141. Do you remember what was written on that sign?

"Answer. "ON STRIKE—UNITED MINE WORKERS," and I have forgotten the number of the Local that was on it.

Henry Starr.

"Question 142. When you got there and before you went over to the tippie, did Mr. Bryan have anything to say?"

Mr. Mullen: One minute, please. I object to that question on the ground that it calls for hearsay, as it does not appear that it was made in the presence of any of the defendants.

The Court: That is the same objection, and it is overruled.

Mr. Mullen: I have three or four more on hearsay.

Mr. Robertson: I am perfectly willing to admit that there is a continuing objection to that entire line of testimony.

Mr. Mullen: To be consistent with what has gone before, we have to make these objections, and if we can agree it is a continuing line, it will save time.

The Court: Very well.

Mr. Allen: I will read the question over.

(The reading of the deposition continued as follows:)

"Question 142. When you got there and before you went over to the tippie, did Mr. Bryan have anything to say?"

"Answer. He tried to get us to go on over there and go to work; that the job was in jeopardy; that if he couldn't get the job done, he would lose the job.

"Question 143. What took place then?"

"Answer. After he took the sign down, we went over to the tippie and some of the boys went on the tippie and went to work and Mr. Trimble wouldn't go to work, said it looked too dangerous, and there was a group of fellows sitting on a wooden crate and we went out and sat down by them.

"Question 144. How far from the tippie?"

"Answer. About twenty feet.

"Question 145. Did you have any talk there?"

page 813 } "Answer. Yes, sir, we talked some with them.

"Question 146. Did they make themselves known?"

"Answer. They said they were there to see if we went to work or not. They said, 'If you go to work, in an hour there will be a hundred men here and they will fish you out of that pond out there, and that damned squirt there with that straw hat on will be the first one to get in.'

"Question 147. Did they say they would pull anyone else out of the pond?"

Henry Starr.

"Answer. They said we all would get in that pond if we worked. They said in an hour there would be enough men there to take care of us.

"Question 148. Did they say what those men would do if they had to come there and stop you from working?

"Answers. They said they would throw us in that pond; pretty stern words for men out in the mountains like that. He said within an hour they could have a sufficient number of men there to take care of us.

"Question 149. Did he say where those men would come from?

"Answer. No, sir, he didn't say.

"Question 150. That was about what time in the morning?

"Answer. Around eight o'clock.

"Question 151. And what did you do in consequence of what those fellows said and did?

page 714 } "Answer. Well, according to our constitution, the only way we can call a man off the job is for safety measures and Jack Patrick said that was one time he was going to exercise his authority, for it wasn't safe for no man to go to work.

"Question 152. And what did he do?

"Answer. He told the men not to go to work until conditions were made safe to go back there and go to work.

"Question 153. Did the men quit after he told them that?

"Answer. We all bunched our tools up and the men came down off the tippie and said they were going to quit work for they were afraid they would get shot in the back.

"Question 154. What time did you leave there?

"Answer. About nine-thirty or ten o'clock in the morning.

"Question 155. Have you ever been back there to work since?

"Answer. No, sir.

"Question 156. Why?

"Answer. I was afraid to go back.

"Question 157. Why?

"Answer. I was afraid I would get killed.

"Question 158. Now after that, on August 2nd, I believe, which would be the following Tuesday, do you know whether there was a meeting held between your local and the local at Salyersville to see whether or not there could be something worked out between the two unions?

page 815 } "Answer. There was, but I wasn't present.

"Question 159. Going back to the situation that existed there on Monday, Tuesday, and Wednesday, July 25,

Henry Starr.

26, and 27, 1949, in addition to the carpenters you mentioned, were there some laborers there?

"Answer. Yes, sir.

"Question 160. About how many laborers were working on the job, if you know?

"Answer. I don't know. I wasn't keeping their time. I think there were six or eight.

"Question 161. Do you know whether or not they were organized in any union?

"Answer. They had signed up with the American Federation of Labor, because I had seen the cards where they had signed up.

"Question 162. On Tuesday, when Hart and this fifty or more men came there, did Hart and his crowd have anything to do with trying to make those men sign up there with the United Construction Workers?

"Answer. Yes, sir.

"Question 163. Tell us what happened about that.

"Answer. They went out there and got those laborers and I don't know how many signed willingly, but I did see them take one of them, a man on each side of him holding him by the arm and one in the back, behind him, and they

page 816 } took him out there and forced him to sign a card.
I was watching that particularly, because he told us he would not sign.

"Question 164. Were they mistreating him in any other way?

"Answer. They just told him he had to sign.

"Question 165. Did you see them actually physically force anyone else to sign?

"Answer. I saw them gang around them and take them out there where the man had the cards and saw them signing them.

"Question 166. What sort of system did they use? Suppose I would be here and I didn't want to sign, what would they do to me?

"Answer. Three or four would gather around you and open up a lane and tell you to walk.

"Question 167. Suppose I wouldn't walk?

"Answer. I would be afraid to say, I don't know.

"Question 168. Do you know how many they forced to sign up there that day?

"Answer. I saw them force two to sign and I couldn't say about the rest of them, but I know there were two they actually forced to sign up there that day.

Henry Starr.

"Question 169. Did you hear any reference made there, either on Tuesday or Wednesday, about a territory known as Beaver Creek?

"Answer. Yes, sir.

"Question 170. What was that?

page 817 } "Answer. They said if they had to, if we went to work any more, they would go to Beaver Creek and get two hundred tough men and come there and kick every one of us out of there.

"Question 171. Did Hart make that statement?

"Answer. Yes, sir.

"Question 172. Did you hear him make that statement?

"Answer. Yes, sir.

"Question 173. Do you know why he said, 'Beaver Creek'?

"Answer. It has the name of being a tough territory.

"Question 174. What I am trying to do here is for you to tell what occurred from Sunday, July 24, 1949, when you asked Mr. Burt Preston to go over there, until they ran the men off the job. Do you recall anything else that happened there that I haven't asked you about?

"Answer. Mr. Preston told him, "I don't believe you can get two hundred men out of Beaver Creek to do that. I have as many friends on Beaver Creek as you have. I used to live there for a number of years and all those fellows are my friends."

"Question 175. And what did Mr. Hart say to that?

"Answer. I don't remember what he said, but that is what Mr. Preston said to him.

"Question 176. Did that make you feel all right so you were willing to go back to work?

"Answer. No, sir.

page 818 } Mr. Robertson: The next is on pages 62 and 63.

Mr. Mullen: Let me ask, do you want the stenographer to take this down. We all have copies of it. It makes a useless amount of record to pile up.

Mr. Robertson: I don't think so. I think it makes the record easier to follow if we have to use it hereafter. I think we had better put it in the record.

Mr. Mullen: I have no objection.

The Court: You are jumping to page 62?

Mr. Robertson: We called him back.

Mr. Allen: There is a continuation of Mr. Starr's testimony on page 62.

Henry Starr.

Mr. Robertson: Other witnesses testified and then he was called back to the stand.

(The reading of the deposition continued as follows:)

"Question 1. Mr. Starr, you testified this morning regarding various things which happened on Monday, Tuesday, and Wednesday, July 25th, 26th, and 27th, 1949. Since that time have you received any threats against your personal safety?"

"Answer. I have received three (3) telephone calls.

"Question 2. State what they were?"

"Answer. Two of them were on Friday evening after July 26th, and the other was on Saturday evening, and said if I wanted to live, not to go back over there."

Mr. Mullen: If Your Honor please, we object page 819 } to all that testimony upon being recalled on the ground that the witness had been excluded and he had been allowed to remain in after testifying on the statement that he would not further testify.

Mr. Robertson: Where is that in the record, Mr. Mullen?

Mr. Mullen: Page 31, isn't it?

Mr. Robertson: I think Mr. Pollard waived it, too.

Mr. Mullen: I am reading Mr. Pollard's objections.

Mr. Allen: May it please Your Honor, that witness wasn't called back to be examined about anything that he had testified to before or about any incidents connected with the affair at all. It was about something that took place after he testified.

Mr. Mullen: Let me look at it a minute.

Mr. Allen: What was the objection?

Mr. Mullen: The objection was that he was permitted to remain in the room upon the completion of his previous testimony without objection and upon the condition that he would not further testify.

Mr. Robertson: I don't remember that. If you show it to me in the record and if I am wrong, that is different.

Mr. Mullen: Let me look at it a minute, please. page 820 } Mr. Robertson: All right. I think you are mistaken. If you will look on page 9 I think it refers to two of your witnesses.

Mr. Mullen: On page 9 it was agreed that all of the witnesses should be excluded. At that time Mr. Starr was on the stand.

Mr. Allen: In any event it is within Your Honor's discretion as to *whether* he can be recalled.

Mr. Robertson: I don't concede that that was done. I

Henry Starr.

don't remember it. I want my memory refreshed. I don't remember that that was or was not done, I mean that he was in the room or not in the room.

Colonel Harris: Page 31 is where it is supposed to be.

Mr. Allen: There is nothing in the stipulation on page 9, and I don't see anything following that which shows it.

Mr. Mullen: We will waive it, Your Honor.

Mr. Robertson: Here it is. Let's clear that up. At the bottom of page 31—

The Court: There is no need to clear it up because they have withdrawn the objection.

Mr. Robertson: They said there they didn't mind his staying in. It is at the bottom of page 31.

Mr. Mullen: It was on the assumption that he page 821 $\frac{1}{2}$ is through testifying. We will waive it, however.

Mr. Allen: I guess I will have to read the No. 1 question again.

(The reading of the deposition continued as follows:)

"Question 1. Mr. Starr, you testified this morning regarding various things which happened on Monday, Tuesday, and Wednesday, July 25th, 26th, and 27th, 1949. Since that time have you received any threats against your personal safety?"

"Answer. I have received three (3) telephone calls.

"Question 2. State what they were?"

"Answer. Two of them were on Friday evening after July 26th, and the other was on Saturday evening, and said if I wanted to live, not to go back over there.

"Question 3. Could you tell who it was?"

"Answer. No, sir. I tried to trace the calls and they were made from a pay station and there wasn't any chance to trace the calls.

"Question 4. Have you had any since those three you have mentioned?"

"Answer. No, sir.

"Question 5. Did you ever get any before that time?"

"Answer. No, sir."

Mr. Robertson: The next is on page 150 to 153. Wait one minute. Let me glance at that. When we come to page 822 $\frac{1}{2}$ the objections we will stop.

(The reading of the deposition continued as follows:)

Henry Starr.

"Question 1. Mr. Starr, there was a question I failed to ask you on yesterday, but you are still under oath.

"Answer. Yes, sir.

"Question 2. Since the occurrence at the Pond Creek Pocahontas Company's #1 Mine at Evanston, in Breathitt County, Kentucky, on July 25th, 26th, and 27th, 1949, has Mr. Hunter approached you—"

Mr. Mullen: That we object to, Your Honor. It *relates* to matters subsequent to the occurrences there, and it is not shown to be relevant.

Mr. Robertson: If Your Honor please, the relevancy of it is that after this occurrence David Hunter got him and tried to get him—I think the Court had better just read it. If the Court would take it up on page 150 over to page 153.

The Court: The Court will read it.

(Court Examining the portion of the deposition referred to.)

The Court: Do you gentlemen want to say anything further?

Mr. Robertson: Yes, sir. If Your Honor please, we think from Question No. 3 at the bottom of page 151 on through page 153 is relevant because it was in effect an attempt page 823 } by David Hunter to buy Starr off.

The Court: Do you want to say anything further, Mr. Mullen?

Mr. Mullen: No, I don't want to make any further objection.

The Court: I will overrule the motion and allow the questions.

Mr. Mullen: Note an exception, please.

(The reading of the deposition continued as follows:)

"Question 3. Now, Mr. Starr, I asked you if, since the occurrence at the Pond Creek Pocahontas Company's #1 Mine at Evanston, in Breathitt County, Kentucky, on July 25th, 26th, and 27th, 1949, Mr. Hart has approached you regarding his giving you a job?

"Answer. Yes, sir.

"Question 4. Do you know about when that was?

"Answer. That was in November 1949, this last year.

"Question 5. At that time did you have regular work?

"Answer. Yes, sir.

Bert Preston, Senior.

"Question 6. What was the conversation that Mr. Hart had with you?

"Answer. We were working on a bridge, me and Mr. P. L. Trimble, on Jenny's Creek, about four miles up here, and he approached us along about 2:00 or 3:00 o'clock in the afternoon and asked us if we would meet with him that page 824 } day, and we said not until after work hours; that we were obligated to the man we were working for until 5:00 o'clock, and he asked if we would meet him at the courthouse, and I said, no, we would meet him at the Lodge Hall and went up there and lit the fire and he came in and *hd* some man with him. I don't know him. He said he was an attorney for United Mine Workers or United Construction Workers, I don't remember which he said, and he asked us if *he* would give him a statement, and he told me he had a job for all of us, providing that things went the way they should go, and I said, "I can give you a statement just the way it happened, but I don't think you will want it."

"Question 7. Did you give him any statement?

"Answer. No, sir. He didn't ask me any more for any statement.

"Question 8. Did he give a job?

"Answer. No, sir."

Mr. Robertson: If Your Honor please, our next witness is Mr. Bert Preston.

Whereupon,

BERT PRESTON, SENIOR,
called as a witness for the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Preston, I am going to ask you to page 825 } speak loud enough for all these gentlemen to hear you, please.

A. All right, sir.

Q. Your name is Bert Preston?

A. Senior.

Q. How old are you, Mr. Preston?

A. 62.

Bert Preston, Senior.

Q. Where do you live?

A. I live in Johnson County, Kentucky, near Paintsville.

Q. How far out of Paintsville?

A. About four miles.

Q. What is the name of the place where you live?

A. West Vanelaer.

The Court: Mr. Preston, will you attempt to talk a little louder?

The Witness: Yes, sir.

By Mr. Robertson:

Q. Mr. Preston, what kind of work do you do?

A. Carpenter work.

Q. Are you a member of any union?

A. Yes, sir.

Q. What union is that?

A. Paintsville 646.

Q. Is that the Carpenters Union of the A. F. of L.?

A. That is.

Q. How long have you been a member of that union?

A. About nine years.

page 826 } Q. In July, 1949, were you an officer of the union?

A. Yes, sir.

Q. What office did you hold?

A. Business agent.

Q. What were your duties as business agent?

A. Looking after the interests of the local.

Q. Are you an officer of the union at this time?

A. No, sir.

Q. But you are still a member?

A. Yes, sir.

Q. Have you ever done carpentry work for Laburnum Construction Corporation?

A. No, sir.

Q. Mr. Preston, were you requested to go to the Laburnum Construction Corporation job site in Breathitt County, Kentucky, and be there on Monday, July 25, 1949?

A. Yes, sir.

Q. Who gave you that request?

A. Otto Preston.

Q. Is he related to you?

A. First cousin.

Bert Preston, Senior.

Q. Is he an A. F. of L. carpenter?

A. Yes, sir. He was at that time.

Q. With what local?

page 827 } A. The same local, 646 Paintsville, Kentucky.

Q. What request did he make of you about going to the job site in Breathitt County?

A. They asked me to come over there, and he was the messenger for them, to come over there, that they were going to have trouble with the United Construction.

Q. Did you go?

A. I did.

Q. Did you get over there Monday morning?

A. I got over there at work time.

Q. That would be about when?

A. About eight o'clock, 7:30 or 8, something like that.

Q. Did you go pretty generally over the work that day?

A. Yes, sir.

Q. Did you go up on top of the mountain?

A. I did.

Q. And around the tippie?

A. Yes, sir.

Q. The schoolhouse?

A. Yes, sir.

Q. And the 25 houses that were being built?

A. They weren't working on the houses at that time.

Q. Did anything happen that day that was unusual?

A. No, sir.

Q. Did you stay there overnight or go home that night?

A. I went home.

page 828 } Q. Did you return Tuesday morning, July 26?

A. Yes, sir.

Q. How did you happen to go back that day?

A. I had a report that they weren't coming in until Tuesday, that they delayed their trip in there until Tuesday.

Q. What time did you get back there Tuesday morning?

A. Work time.

Q. Will you state what happened there from the time you got there, say, first, up to noon?

A. I walked over around the tippie there and I went up to the schoolhouse again on Tuesday morning before noon, but I wasn't up on top of the hill.

Q. Did anything happen before noon, before the noon hour?

A. No, sir.

Bert Preston, Senior.

Q. What was the first thing that happened out of the ordinary that day as far as you yourself know about?

A. I was standing at the tippie. I had eaten lunch and had finished my lunch and I was standing at the tippie. There was quite a bunch of fellows came along and passed by me and went over to the toolhouse, carpenters toolhouse. I followed them over.

Q. How many men would you say were in that group?

A. I would estimate something like 40, near 40, page 829 } something like that.

Q. Was anybody in charge of the group?

A. Yes, sir.

Q. Who was that?

A. A fellow by the name of Hart.

Q. All right, then what happened?

A. He went on in the toolhouse and he was talking to some of the carpenters when I went in there. They filled up the whole front of the house. I had to elbow my way to get in. He went almost in the middle of the little room. He was talking to some of them. I walked up and asked him what he wanted, and he turned around to me and said, "Who are you?" I told him I was acting agent for the carpenters of the Paints Local.

Q. Then what happened?

A. He told me then that he wanted us all to sign up with the United Construction, and I told him the boys all had cards with the A. F. of L. He said we would sign up or get out, get off the job. I said, "Well, if we don't sign up or get off the job, what will you do then?"

He said, "I will go to Beaver and bring 300 men from Beaver and then you will find out what will happen."

Then I asked him the question, I said, "Well, what will happen?"

He said, "We will kick your damned asses off the job."

Q. Did anything else happen in the toolhouse?
page 830 } A. Then I told him that I was going to take it

up with the International, and I said to him, "You know how well Willim Hutcheson loves John L. Lewis."

He said, "Well, let them thrash that out in Washington."

Q. Did Hart make any statements to the men there in the toolhouse about what he could get for them if they joined up with the United Construction Workers?

A. I never heard it.

Q. Did you hear argument between Hart and a man named Arnett?

Supreme Court of Appeals of Virginia.

Bert Preston, Senior.

A. It was after that talk. Arnett *accused* him of promising the men more than he could do, and he said that he hadn't promised them any more. John Arnett said, "You are a God damned liar." All this crowd came shuffling down and were in their shirts and everything else. I don't know what they were going for. I tapped John on the shoulder and said, "John, let me do the talking." John hushed up.

Q. Then what happened?

A. Then I told him—he said that he had all the laborers signed up over there. I asked him if he had ever given them their obligation. He said "We don't give them an obligation."

Q. What did you say to that?

A. I didn't say anything, but I knew better.

page 831 } Q. Were you scared in there?

A. That was the tightest place I was ever in in my life, and I have been in tight ones.

Q. Were you scared?

A. I was scared.

Q. What were you scared of?

A. I was scared of all those people around there. They looked like they were going to try to kill everybody in there, and I guess they would if I hadn't stopped John Arnett.

Q. Then what happened after you got out of the toolhouse?

A. He went out and he said he was putting up a picket. I said, "I will not recognize your picket." He told one of the big tall fellows, I don't know who it was, and said go out and stand at the foot of the stairs that goes up to the tippie. I said we won't recognize any picket line. Then he got a card and wrote a card. This fellow was carrying it. And the tippie worked on. I walked up to Mr. Hart and I asked him, "Don't your picket stop the tippie?"

He said "Tom Raney told me not to stop the tippie for a day or two unless I had to."

Q. Then what happened next?

A. After I came back with him I started over to the office, the construction office over there to call the inter-
page 832 } national, and on my way out they run across. There was one fellow walked up to a laborer. The laborer had quit, had his lunch kit under his arm and started walking off. This tall fellow walked up to him and he said, "Sign this." He just stood and looked at him, I don't know, it seemed like a half a minute. A couple more fellows walked up, one on each side of him. This fellow had a book, and this fellow said "By God, sign it." And this fellow put his lunch

Bert Preston, Senior.

kit at his feet and signed whatever it was he had in his hand.

Q. Did anything happen after that that day?

A. Not that I know of.

Q. How long would you say Hart and his men were there?

A. Well, I would say something like 45 minutes.

Q. Did the men who had been working there, the carpenters and laborers, did they leave in a group or just drift away?

A. They drifted away.

Q. What did you do?

A. I went over to the office and put a call in at international and didn't get them, but we did get a call in to Frank Dixon at Louisville.

Q. What was the purpose of that call?

A. We wanted him to get in touch with International and let International know what had happened over there.

Q. Did you go on back to Paintsville from the job site?

A. Yes, sir. I guess it was 3:30 of 4:00 when I page 833 } left there.

Q. Did your local hold a meeting at Paintsville that night?

A. Yes, sir.

Q. Did you attend it?

A. Yes, sir.

Q. How many men would say were there?

A. Thirty-five.

Q. What was the purpose of the meeting?

A. We wanted to discuss it, and Mr. Ham Bryan was going to attend the meeting. The meeting was called especially I think for him.

Q. Was he asked to make a talk to the meeting?

A. Yes, sir.

Q. Did you hear the talk he made?

A. I did.

Q. What was the substance of it?

A. He wanted us to go back to work regardless. We said that somebody was apt to go over there and get killed or hurt. He called it hurt, but people down in that country don't hurt you. They kill you.

Q. What did you have to say about it?

A. I told him he didn't know a damned thing he was talking about, that he was from the city, a town, that he page 834 } didn't know a damned thing about them people down there.

Q. You know them pretty well?

Bert Preston, Senior.

A. Yes, sir.

Q. Did you ever live over on Beaver Creek?

A. I have been on Beaver Creek, sir.

Q. How do you like it over there?

A. Well, they are rough there too. I guess there are more murder cases in Floyd County than any place on Sandy River.

Q. When Mr. Bryan wanted them to go over there and you told him he didn't know a damned thing he was talking about, what happened next?

A. He kept arguing that they would have to go or lose their jobs. I told him the jobs didn't amount to nothing when a man was dead. He argued around I guess for an hour, and I told him, I said, "If you will put on a pair of carpenter overhauls and furnish each of these men two, and not less than a '38 revolver, I will have no objection to their going."

Q. What did he say to that?

A. He said he would do it.

Q. Did he say he would give them the guns?

A. No. He talked the boys out of that before he left the hall.

Q. What was the final decision about the guns?

A. To leave them off.

page 835 } Q. Whose advice was that?

A. Mr. Bryan's.

Q. What did he say about that?

A. Mr. Bryan?

Q. Yes.

A. He said leave them off.

Q. Did the men take a vote on what they would do?

A. Yes, sir.

Q. What did they vote to do?

A. They voted to go back over there.

Q. Were they going to meet at any particular place or meet at the job site?

A. I don't know. I wasn't interested in it after they decided to go back.

Q. Did you go back over there the next day?

A. No.

Q. Why didn't you go?

A. I didn't have any business over there.

Q. Have you been back since?

A. No, sir.

Q. Why?

A. I have no business over there.

Bert Preston, Senior.

Q. Are you scared to go over there?

A. I am. I have good friends over there, and
page 836 } they have all advised me not to come over there
any more.

Q. Do you know about the meeting that was held at Salyersville on August 2?

A. Yes, sir.

Q. Were you at that meeting?

A. I was.

Q. What happened at that meeting?

A. He still argued for them to go back to work, that he was going to lose his job over there if they didn't go back. He asked me right in the meeting if I was willing for the men to go back, and I said no, that I wasn't. Then he asked the Salyersville business agent, Robert Poe, if he was willing to go back, and Robert Poe said no, that he wasn't willing to go back over there to work.

Q. What did Mr. Bryan have to say to that?

A. He was at the end of his row it looked like. Then he asked me a while after that if it would be all right for some of the boys over there to help crate up his tools and move away from there, and I told him if they wanted to go and help him it would be all right with me.

Q. Did Bryan have any words there at the Salyersville meeting with Weaver Freeman about whether the men would go or not?

A. Yes, sir.

Q. What was that?

page 837 } A. They talked quite a little about it, and Freeman backed me up 100 per cent. He said he was afraid to go back, that he knewed that he wouldn't go to Breathitt County, that he had no business over there and he wouldn't advise the men to go, that he had no way of forcing them to go and he would not force them to go.

Q. Did he express himself on what Bryan knew about it or not?

A. Well, yes. He told Bryan he didn't know anything about it. He told him about the same thing I did.

Mr. Robertson: The witness is with you.

page 838 } Colonel Harris: I want to ask him one question and then postpone my cross until tomorrow.

The Court: All right.

Bert Preston, Senior.

CROSS EXAMINATION.

By Colonel Harris:

Q. Is your name Bert E. Preston, Sr.?

A. That is right.

Q. Is that your signature?

(Witness examining document.)

Mr. Robertson: I would like you to show me what you are asking the witness about. That is in accordance with Virginia practice.

Colonel Harris: I will show it to you before I ask any question other than that.

Don't talk about it. Just answer that question. I want to show it to the lawyer.

The Witness: That is my signature, but I never—

The Court: One minute.

(Plaintiff's counsel examining document.)

Mr. Robertson: We don't object to that. That is just part of what he said, my dear friend.

Colonel Harris: I understood we weren't going to take it up until tomorrow morning, Judge.

The Court: All right. Gentlemen, it is five o'clock, and Court will be adjourned until ten o'clock tomorrow morning.

page 839 } (Whereupon, at 5:00 o'clock p. m. the Court
recessed until 10:00 a. m., Tuesday, January 30,
1951.)

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page 840 }

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Hearing in the above-entitled matter was resumed, pursuant to recess, at 10:00 a. m., before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on January 30, 1951.

Appearances: Archibald G. Robertson, George E. Allen,

Bert Preston, Sr.

T. Justin Moore, Jr., Francis V. Lowden, Jr., William A. Johnson, Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Colonel Crampton Harris, Counsel for Defendants.

Also Present: Robert N. Pollard, Jr.

page 841 }

PROCEEDINGS.

(Roll call of the Jury.)

The Court: I believe Mr. Preston was on the stand when we adjourned yesterday.

Whereupon,

BERT PRESTON, SR.

the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

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CROSS EXAMINATION (continued).

By Colonel Harris:

Q. Mr. Preston, when we adjourned last night, I had just asked you to look at your signature and asked you whether or not it was your signature, and you said that it was.

A. Yes, sir.

Q. This paper that you signed was signed in your own home, wasn't it?

A. That is right.

Q. And two men came there to talk to you?

A. That is right.

Q. After they had talked to you, you signed?

A. With objections, yes, sir.

Q. You objected to one sentence, and they scratched that sentence out, and you initialed the lines marking
page 842 } it out, didn't you?

A. Yes, sir.

Q. You were sworn at that time, weren't you?

A. No, sir.

Q. You read what was in that paper above your name, didn't you?

Bert Preston, Sr.

A. Yes, sir.

Q. Do you recall that it starts off: "State of Kentucky, County of Johnson: The affiant, Bert Preston, having been duly sworn, deposes and says"?

A. I wasn't sworn.

Q. You read that, didn't you?

A. I read it, yes, sir.

Q. You didn't ask them to strike that out, did you?

A. No, sir.

Q. On that occasion, the paper that you signed, and which I have in my hand, in that you made the statement that it was true that William O. Hart, a representative of the United Construction Workers—you told Hart that if they, the United Construction Workers, established a legal picket line, that the local union would honor it?

A. Yes, sir.

Q. Then you told him that Hart asked you what you would do if the picket line wasn't there the next day, and you answered that they would sure as hell work?

page 843 } A. That is what I said.

Q. Then you also told these gentlemen that you told Hart at that time that if they continued their legal picket line, they would honor it?

A. I don't remember telling him that.

Q. Will you look right here, this last sentence?

A. (Examining document.) That is my signature, but I didn't sign that statement at all.

Q. You admitted yesterday evening that you signed this, didn't you?

A. That wasn't what you showed me yesterday evening. What you showed me yesterday evening was just on the front here, just down a little ways, and I signed up here, and down there it is signed two places. I only signed one paper.

Q. You saw me hand the paper to Mr. Robertson, the lawyer in the case, didn't you?

A. I never made a statement like that. The only statement I made was that I would honor a picket line. I told him when he brought it there if he added a word to it or took one away from it, I wouldn't sign it. Then he marked out that they had went on strike. I said, "I won't sign it." After he marked it out, I did not sign it. The rest of the statement, I never made.

Q. You saw me hand this statement to Mr. Robertson yesterday, didn't you?

page 844 } A. Yes, sir.

Bert Preston, Sr.

Colonel Harris: If the Court please, we offer in evidence as Defendants' Exhibit—you may look at it and see if it is the same thing I showed you yesterday, Mr. Robertson.

(Paper handed to Mr. Robertson.)

Colonel Harris: —as Defendants' Exhibit No. 1 for identification.

(The document referred to was marked for identification Defendants' Exhibit No. 1.)

page 845 } By Colonel Harris:

Q. You tell this jury now that you never at any time told Mr. Hart that if they established a legal picket line, you would honor it?

A. I told him—

Mr. Robertson: He didn't say that at all. He is misquoting the witness either intentionally or unintentionally.

Colonel Harris: I asked him do you tell this jury now that you never at any time told Mr. Hart if they established a legal picket line, you would honor it.

The Witness: I told him that.

By Colonel Harris:

Q. You did tell him that?

A. Yes, sir.

Q. You took a prominent part in the proceedings out there, didn't you?

A. Yes, sir.

Q. When they were in the toolhouse, about 40 men, I believe you said, were in the toolhouse?

A. I said there were 40 men in the bunch, but they didn't add get in the toolhouse. It wasn't big enough. They crowded in, all they could get in.

Q. How many in your best judgment were in the toolhouse?

A. About half of them about 20.

Q. About 20. At that time you had to elbow your way into the toolhouse, didn't you?

A. Yes, sir.

Q. When you elbowed your way into the toolhouse did you see any drunken men?

A. I never seen a drunk man there. I wouldn't swear that I seen anybody drunk.

Bert Preston, Sr.

Q. Did you see any weapons?

A. No, I never seen any weapons.

Q. Did you hear Mr. Arnett tell Mr. Hart "You're a God damned liar"?

A. Yes, sir.

Q. When a member of your union used that sort of fighting language to Mr. Hart was the member of your union struck or hit by anybody?

A. No, sir.

Q. At that time you touched Arnett on the shoulder and told Arnett to let you do the talking, didn't you?

A. Yes, sir.

Q. And when you did that you then told Mr. Hart that if they would establish a legal picket line, you would honor it?

A. Yes, sir.

Q. How long was it after you gave directions to Mr. Hart as to the proper way to proceed was it before he made the sign?

page 847 } Mr. Robertson: If Your Honor please, I object to that. I am not going to keep interrupting, but I do want to put counsel on notice here that he must quote the witness fairly. This witness has not said that he gave Hart any directions to do anything. It is perfectly unfair to the witness.

The Court: The witness is on cross examination.

Mr. Robertson: I know, but he is predicating his questions on a false assumption. The witness never said he instructed Hart to do anything.

The Court: I didn't understand counsel to say that he did that.

Mr. Robertson: I am not going to interrupt any more, but I call to the attention of the Court and the jury that the lawyer is not being fair to the witness. Read the question, please.

Colonel Harris: I state, Your Honor, that it is my purpose to be very fair to the witness. In no particular do I want to take advantage of any witness. All I want is to get the truth before this jury.

Mr. Robertson: Read the last question, please.

(The pending question was read by the reporter.)

By Colonel Harris:

Q. When you told Mr. Hart that he would have to put up a

Bert Preston, Sr.

page 848 } picket, he then and there told one of the men to
walk out there and stand, and when he did that you
told him you wouldn't recognize that kind of
picket, isn't that correct?

A. That is right.

Q. Then you added that he would have to put up a card to
show what he was picketing for?

A. Yes, sir.

Q. Do you know a man named Henry Starr?

A. Yes, sir.

Q. After Mr. Hart put up the sign as indicated by you, did
you give instructions to Henry Starr?

A. I don't remember giving Henry Starr any instructions.

Q. To refresh your recollection, didn't you, after he put
up the sign, advise your men to quit work?

A. Yes, sir.

Q. And then after advising your men to quit work didn't
you tell Mr. Starr they had put up a picket and we would
recognize it?

A. I don't remember that.

Q. Your name is Mr. Bert Preston, isn't it?

A. That is right.

Q. I will ask you if on the 18th and 19th of August, 1950,
in the offices of Meade & Johnson in the city of Paintsville,
Johnson County, Kentucky—

Mr. Robertson: What page, please?

Colonel Harris: I will get to the page in a minute.

page 849 } By Colonel Harris:

Q. —if you didn't—

Mr. Robertson: What page, please.

Colonel Harris: I will follow my own ideas. I told you
I would give it to you in a minute.

Mr. Robertson: When he refers to the record of deposi-
tions I ask the Court to instruct Counsel to tell me the page
to which he is referring.

Colonel Harris: Page 1. It is the first page.

The Court: Page 1.

Colonel Harris: Showing the date.

By Colonel Harris:

Q. —if you didn't give testimony on that occasion. They
took your deposition.

Bert Preston, Sr.

A. They did.

Colonel Harris: Now refer, Mr. Robertson, to page 42, which contains a part of this witness' deposition, and you will find this question No. 69: "Question: Did you advise your men to quit work?" "Answer: Yes, sir."

By Mr. Harris:

Q. That is true, isn't it?

A. That is right.

Q. You swore that out there then, didn't you?

A. Yes, sir.

Q. All right, question 70: "Who did you give page 850 } your instructions to?" And you answered: "Henry Starr." Do you remember that?

A. No, I don't.

Q. There was a person there taking down, a Mrs. Mabel Louise Porter. You know her, don't you?

A. I do.

Q. She was sitting there in the room in your hearing taking down the testimony, the questions and answers, wasn't she?

A. She did.

Q. To refresh your recollection further, I will ask you if this question, No. 71, was not asked you, just after you answered "Henry Starr."

"Question: What did you tell him?" And you answered under oath on that occasion, didn't you, "I told him they put up a picket and we would recognize it."

Do you recall that now after reading what the lady has down here?

A. I don't remember it.

Q. Do you say you didn't say it?

A. I didn't say that. I said I didn't remember it.

Q. I ask you now another question: Do you say you didn't say that?

A. I still say I don't remember it.

page 851 } Colonel Harris: Will Your Honor instruct the witness to answer my question?

The Court: Can you answer yes or no, Mr. Preston?

Mr. Allen: Isn't the witness entitled to have his memory refreshed by having shown him the statement and let him tell all that he said in this immediate connection?

Bert Preston, Sr.

Mr. Robertson: I am going to offer the whole deposition into evidence as soon as they get through and try to ask the Court to let me read his entire deposition to the jury so they can tell whether he is lying or telling the truth.

Colonel Harris: Counsel is just anticipating what we were going to do. Naturally when I ask him questions about the deposition we are going to offer it and let the jury see it.

Mr. Allen: I understand, Your Honor, the rule to be that if you ask a witness about former testimony or a former statement he has a right to look at it before he answers the question, and let him refresh his memory.

The Court: Let him look at it, Colonel Harris.

Colonel Harris: Yes, sir. Questions 69, 70, and 71, right on that page. That is what I was asking about.

(Witness examining deposition.)

By Colonel Harris:

Q. No. 69 was the question, did you advise your page 852 } men to quit work and you said yes, sir, and you answered that that is true and correct.

A. That is true.

Q. No. 70, the question was who did you give your instructions to, and the answer was Henry Starr. Do you say whether that is true and correct or whether the lady added something that you didn't say?

A. I don't remember having—

The Court: What was your answer?

The Witness: I don't remember having talked to Henry Starr.

By Colonel Harris:

Q. I didn't ask the witness whether he talked to Henry Starr. I asked you if the question was asked you, who did you give your instructions to on that occasion, and if on that occasion you didn't answer under oath that Henry Starr was the one?

A. I didn't get that question.

Colonel Harris: Will you read the question to him, please?

(The pending question was read by the reporter.)

The Witness: I don't remember talking to Henry Starr in

Bert Preston, Sr.

any way at all about honoring a picket line. The only talk we had was he asked Hart's permission for the men to go up on the tippie and get their tools, and Tart told page 853 } him to go and get them. The only conversation I remember—

By Colonel Harris:

Q. I am not asking you whether you had a conversation with Mr. Starr. I am asking you what you swore to. The question is—I will repeat it—did you on that occasion before Mrs. Mabel Louise Porter have this question asked you. Question No. 70: "Who did you give your instructions to?" And if you did not make answer, "Henry Starr"?

A. Henry Starr never had any conversation with me at all there. When I came out from the toolhouse I passed him alongside the building.

The Court: Do you deny or affirm making the statement?

The Witness: I still deny that I ever talked to Henry Starr about the strike. If I did, I don't remember it.

Colonel Harris: We ask the Court to instruct the witness to answer our question, if the Court please.

The Court: The Court understands from the witness that he doesn't remember making such a statement, and by that the Court further understands that he doesn't deny or affirm it. That is the best I can make out of his testimony. Is that correct or not?

The Witness: That is right.

By Colonel Harris:

Q. On that occasion when they were taking your page 854 } deposition do you recall this question being next asked you: "What did you tell him"? And that you made answer, "I told him they had put up a picket and we would recognize it."

A. I don't remember now telling Henry Starr that or talking to him that way. Henry Starr when he sees a picket or any union man sees a picket, you don't have to tell him.

Q. It is just ingrained with a union man to honor a picket line, isn't it?

A. It is.

Q. How long have you been a union man?

A. Al most nine years.

Q. How long have you been familiar with the reputation of Breathitt County, Kentucky, for violence?

Bert Preston, Sr.

Q. And it has had a reputation of feuding and fighting and killing one another for 20 years, hasn't it?

A. Oh, 20 years, I imagine, or longer.

A. That is right.

Q. The County adjoining Breathitt is Floyd County, isn't it?

A. McGoffin County, that we have to go through.

Q. You have to go through Magoffin. You go through Magoffin and you get to Floyd. How long have you been familiar with the reputation of Floyd County?

A. Forty years or longer.

page 855 } Q. What has been the reputation of Floyd County during that 40 years for feuding and fighting and violence?

A. About as bad as Breathitt County and Magoffin County.

page 856 } Q. You would say, would you not, that those Kentuckians out there in Breathitt County and in Floyd County, don't care any more for killing a man than they do for sitting down at the table and eating?

A. They will kill you if you cross their path, and don't think they won't.

Q. Do you mean that that is just confined to the few people who are members of the United Construction Workers?

A. The people as a whole.

Q. The people as a whole: all right.

When you were giving your deposition that I have asked you about this morning, didn't you describe it this way—and to refresh your recollection I will read you the preceding question:

“Question. Were you afraid to go back to work there as a result of what Hart and his crowd had said and done?”

“Answer. I wasn't working there, but I was afraid for the men to go back to work.

“Question 73. Why?”

And you answered:

“Answer. I knew the condition over there. They don't care any more for killing you than sitting down at the table and eating.”

Do you recall saying that?

Bert Preston, Sr.

page 857 } A. I do.
Q. That is true, isn't it?
A. Very true.

Q. Do you recall the meeting on August 2, which was Tuesday, at Salyersville, at which Mr. A. Hamilton Bryan was present?

A. Yes, sir. We call it "Salyersville" over there, though.
Q. Thank you.

Mr. Bryan at that meeting made a speech, didn't he?

A. I never heard it.

Q. In giving your deposition, I will ask you to look at Question No. 83, right up there (indicating).

A. (Examining deposition.) I still say Mr. Bryan never made a speech. He made a talk with everybody. He would ask one a question and another one a question. But as far as a speech, Mr. Bryan never made it.

Q. I will ask you if, when you were giving your deposition, Question No. 83 was not asked you in these words.

"Did Mr. Bryan have anything to say at that meeting?" and if you did not make answer on that occasion:

"Yes, sir. Mr. Bryan was very interested in it, and I told Mr. Bryan it was election time and it was impossible to get an injunction in Magoffin or Breathitt Counties."

Does that refresh your recollection?

A. If I remember right, I told Mr. Bryan he had page 858 } better get his injunction in Federal Court, because it was election time and he couldn't get any in Magoffin or Breathitt County.

Q. Was that answer correctly written down by the young lady out there?

A. I wouldn't think so. It wasn't the way I answered it.

Q. I will ask you to look at Question 84, and the answer right there where my thumb is.

A. (Examining deposition.) Yes, sir. I will swear to that.

Mr. Robertson: I will ask counsel to read that question and answer.

Colonel Harris: If the Court pleases, I don't need any

Bert Preston, Sr.

directions as to what I am going to read. I think I show very clearly that I have been coming up to this point in order to read it to the Court.

Mr. Robertson: I didn't give him any direction. I made the request.

By Colonel Harris:

Q. "Question 84. Did he"—and the context shows it was referring to Mr. Bryan—"Did he want the men to get back to work?"

"Answer. Yes, sir. He wanted the men to go back to work and get a man hurt so he could get an injunction, and we told him we would rather lose the job than get a man hurt."

You say that is correct?

page 859 } A. That is correct.

Q. Do you recall going over to see Mr. Hart on Wednesday, or did he come to Paintsville and send for you?

A. Give me the date.

Q. Wednesday would be the 27th.

A. Mr. Hart sent for me.

Q. Did you go?

A. I did.

Q. I will ask you to look at Question No. 104, right up there, and your answer to it (indicating).

A. (Examining deposition.) I did.

Q. The question reads:

"Question 104. Did anything happen anywhere else in this particular connection?"

"Answer. Mr. Hart did come to Paintsville, and sent for me on Wednesday, and wanted to apologize for running us out over there. I asked him if he still had a picket up, and he said he did, and I told him I didn't have any talk for him."

You say that is correct?

A. That is correct.

Colonel Harris: That is all.

RE-DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Preston, you testified yesterday that after you elbowed your way into the tool house, and when Arnett called

Bert Preston, Sr.

Hart a god damned liar, that that was about as tight a situation as you were ever in, in your life.

A. Yes, sir.

Q. Then when Hart asked you would you honor a picket line, why did you tell him you would?

Colonel Harris: We object to that as an uncommunicated mental operation of the witness. He has said he told him that; and what went on in his mind, we submit is not proper legal evidence.

Mr. Robertson: It is just the same as everybody else.

The Court: I think he can give the reason.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. Why did you tell him you would honor a picket line?

A. It was my only way out.

Q. As you understand picket line, was what he did out there a legal picket line?

A. No, sir.

Q. Why?

A. He didn't have anybody on the job.

page 861 } Q. Did you smell any whisky in the tool house?

A. I did not.

Q. Do you know a man named Noble Hobbs?

A. No, I don't.

Q. At the time you gave this signed statement which you said was given at your home, how many men came there?

A. Three.

Q. Was one of them that young man sitting right over there with his arm up on that railing?

A. It was.

Q. Do you know his name?

A. I do not.

Q. When you signed that statement, was anything written on it below your signature?

A. No, sir.

Q. I am going to read the statement, everything above your signature, to you, and then ask you whether it is true or false, and if there is anything about it not right, what is wrong.

"The affiant, Bert Preston, having been duly sworn, deposes and says:

"That he is a Business Agent for the Carpenters Local Union No. 646, American Federation of Labor.

Bert Preston, Senior.

“The affiant says that on or about July 26, 1949, he was at the construction job of the Laburnum Construction Corporation in Breathitt County, Kentucky.”

page 862 } Then this sentence is inked out: “At that time the United Construction Workers were going on strike.” That is marked out, and it is initialed “B. E. P.”

“The affiant says that he told William O. Hart, a representative of the United Construction Workers, that if they, the United Construction Workers, established a legal picket line, that his local union would honor it. The affiant says that Hart asked him what he would do if the picket line wasn’t there the next day, and that he answered that they would sure as hell work. He told Hart at that time that if they continued their legal picket line they would honor it.

“BERT E. PRESTON, SR.”

Mr. Preston, is that all you told them there at your house that night when they came to your home?

A. Yes, sir.

Q. Did you insist that they scratch out that sentence which is scratched out?

A. Yes, sir.

Q. Then under your signature:

“Subscribed and sworn to this, the 8th day of December, 1949, before me, a Notary Public, who hereby certify under my official seal that I am duly authorized by the laws of the

State of Kentucky to administer oaths in the
page 863 } State of Kentucky.

“NOBLE HOBBS, Notary Public.

“My Commission expires 3-3-52.” And the Notary’s seal is on it.

Do you know whether Noble Hobbs is an official or representative of either the United Mine Workers or District 50 or the United Construction Workers?

A. No, sir, I don’t know.

Q. Based on what occurred and what you saw, what you heard, what you did at the job site there on the 26th day of July, did the men quit on account of the picket line, or quit because they were scared to go back to work?

Bert Preston, Senior.

Colonel Harris: We object to that question, if the Court pleases. That is the issue for this jury to decide in this case.

Mr. Robertson: The Court has ruled on it over and again, the reason why they quit.

Colonel Harris: If Your Honor has ruled on it over and over again, we object on the ground that it is a needless repetition.

Mr. Robertson: I think it is a proper question, Your Honor.

The Court: I will allow the question for what it is worth.

Colonel Harris: We reserve an exception.

page 864 } By Mr. Robertson:

Q. Based on what you heard, what you saw, and what you did, and what you know, there at the job site on the 26th day of July, 1949, did the A. F. of L. men quit on account of the picket line, or because they were scared to work?

Colonel Harris: We interpose the same objection just stated to the same question.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. Answer the question, please.

A. It was through fear that we quit, instead of the picket line.

Q. When Hart sent for you there and you asked did he still have his picket line up, and he said yes, and you said you didn't have any further talk for him, what did you mean by that statement?

Colonel Harris: We object to the witness now, at this late date, interpreting plain and simple every-day language that needs no interpretation; and on the further ground that it invades the province of the jury.

Mr. Robertson: If Your Honor please, it is perfectly obvious that what the witness is using there is a colloquial, Kentucky mountain expression. I don't think anybody in this room, except my friend there, considers it plain
page 865 } English. I am trying to clear it up.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. What did you mean when you told Mr. Hart you didn't have any more talk for him?

Bert Preston, Sr.

Colonel Harris: We interpose the same objection just made to substantially the same question, and reserve an exception.

The Court: Go ahead and answer the question.

The Witness: I meant that I didn't have any more talk with him about the job in a new way.

By Mr. Robertson:

Q. That you just didn't want to talk with him?

A. That is right.

Colonel Harris: We object to him leading the witness, if the Court please. Will Your Honor exclude that answer?

The Court: The objection is sustained.

By Mr. Robertson:

Q. Either on that occasion on the 27th of July, or on any other occasion, did Hart ever offer you any sort of apology for running you off the job?

A. That was the day, the 27th, when he wanted to apologize for running us off.

Q. What did you say along that line?

page 866 } A. I told him we didn't have any talk for him.

Q. Did he say anything about having run you off the job?

A. Yes, sir.

Q. What did he say?

A. We went from there, from the street—we were on the street, Court Street, when I did the talking with him or he was talking to me. There were four or five others with him, our carpenters from Paintsville. They said they were going out to Odd Fellows Hall where they could get chairs and sit and talk. They asked me to go along, and I said no, I didn't believe I would go, but they insisted that I go.

After we got out there, he was still talking about the job, and I asked him why he brought this gang in with him. He said he wanted to show the Laburnum Construction Company their strength.

Q. Did you ever ask him in that conversation if you could go back to work?

A. No, sir.

.

page 867 } If Your Honor please, I understand counsel for the other side agrees to it, and I am going to ask

Bert Preston, Sr.

that we be permitted at this time to introduce in evidence the deposition of this witness at Paintsville, Kentucky, and let me take the stand and let Mr. Allen ask the questions and me read the answers, just as we did in the case of Henry Starr.

That is all I have with this witness.

Colonel Harris: I want to ask him another question.

The Court: I will give you an opportunity to do that.

Colonel Harris: It just saves me the trouble of reading it. We were going to read it.

Mr. Robertson: I don't object to that.

The Court: I understand, gentlemen, there is no objection.

Mr. Mullen: We can't object, Your Honor. It is their deposition, and they can put it in any time they get ready, I think.

The Court: Colonel Harris, do you want to ask the witness some more questions?

Colonel Harris: Yes, Your Honor.

The Court: You may proceed.

RE-CROSS EXAMINATION.

By Colonel Harris:

Q. The apology that Mr. Hart offered was that page 868 } he apologized if there was any misunderstanding on who he represented, wasn't it?

A. He didn't refer to who he represented. He said he just wanted to apologize because he had run us out of there.

Q. And there was no mention whatsoever of who he represented?

A. No, sir.

(Defendants' counsel conferring.)

Colonel Harris: That is all on re-cross examination of this witness.

The Court: All right. You may stand aside.

(Witness excused.)

page 869 } (At this point the deposition of Bert Preston was read to the jury, Mr. Allen reading the questions and Mr. Robertson reading the answers, as follows:)

"The Witness,

BERT PRESTON,

being first duly sworn, testified as follows, to-wit:

"DIRECT EXAMINATION.

"Question 1. Mr. Preston, your name is Bert Preston?

"Answer. Yes, sir.

"Question 2. How old are you, Mr. Preston?

"Answer. I am 62 years old.

"Question 3. Where do you live?

"Answer. I live in West Van Lear.

"Question 4. How far from Paintsville?

"Answer. About four miles.

"Question 5. How long have you been living in this general territory?

"Answer. All my life.

"Question 6. What is your occupation?

page 870 } "Answer I am a carpenter.

"Question 7. Do you belong to any union?

"Answer. Yes, sir.

"Question 8. What union?

"Answer. American Federation of Labor, Carpenters Union.

"Question 9. What local?

"Answer. Paintsville local.

"Question 10. What number?

"Answer. 646.

"Question 11. Are you any officer of your local union, Mr. Preston?

"Answer. I am not now, no, sir.

"Question 12. In July, 1949, were you an officer of the Local 646?

"Answer. Yes, sir.

"Question 13. What office did you hold?

"Answer. Business agent.

"Question 14. As such business agent what were your duties generally?

"Answer. It was the business of looking after our carpenters, to get them jobs and their wages and see that the conditions were all right.

"Question 15. And the headquarters of your Local 646 was where?

page 871 } "Answer. Paintsville, Kentucky.

"Question 16. Now the week starting on July 25, 1949, was a Monday, the beginning of a week. Prior to

Bert Preston.

that time as an officer of your local 646 had you learned or had reports come to you that the carpenters of your Local 646 who had been working out at the Pond Creek Pocahontas Company No. 1 Mine at Evanston in Breathitt County, Kentucky, been run off the job out there?

"Answer. Yes, sir.

"Question 17. Over what period of time were those reports coming to you?

"Answer. I was notified on a Sunday, July 24, 1949.

"Question 18. Who notified you?

"Answer. Otto Preston.

"Question 19. Did you hear it from any other source? Did you hear any such reports from Mr. Henry Starr?

"Answer. No, sir. I got my reports from Otto Preston.

"Question 20. Were you requested to do anything?

"Answer. I was requested to go over there on Monday, July 25, 1949.

"Question 21. Did you go?

"Answer. Yes, sir.

"Question 22. What was the report that you got on July 25, 1949?

"Answer. Otto notified me of the reports that page 872 } the United Construction Workers were coming in on Monday to run the carpenters off there and asked me to come over and the night before I received an order from Henry Starr asking me to go over, but Otto was telling me himself.

"Question 23. Did you go over there on Monday?

"Answer. Yes, sir.

"Question 24. What situation did you find over there on Monday?

"Answer. On Monday when I went over there Otto came to me and told me they had decided not to come in until Tuesday the 26th.

"Question 25. Did you stay out there until Tuesday the 26th?

"Answer. No, sir. I came home and went back on Tuesday the 26th.

"Question 26. Did you go out there by yourself or with other people?

"Answer. I went by myself.

"Question 27. What time did you get out there?

"Answer. About eight o'clock.

"Question 28. Mr. Preston, tell what you saw when you got there, what the situation was and what you did?

Bert Preston.

"Answer. Well, when I went out there they told me they were ganging up.

"Question 29. Who told you that?

page 873 } Mr. Mullen: I object to that answer on the ground it is not responsive to the question and also it is hearsay, No. 28.

Mr. Robertson: I think it is proper, Your Honor. It is information given to him as the business agent of the union, generally, from inquiry around on the job.

The Court: The next question is, who told you that?

Mr. Robertson: Yes.

The Court: I will overrule the objection, Mr. Mullen.

Mr. Mullen: We will note an exception, if Your Honor please.

(The reading of the deposition continued as follows:)

"Question 29. Who told you that?

"Answer. Mr. Haslam, Superintendent of the Pond Creek Pocahontas Company No. 1 mine at Evanston told me they were ganging up at the store.

"Question 30. Who did they say they were?

"Answer. He said they were miners from Tiptop in the edge of Magoffin County.

"Question 31. What did you do then?

"Answer. I walked up to the store house and school house and to see the gang that was working up there.

page 874 } "Question 32. How many carpenters were working at the school house?

"Answer. Two laborers and 8 carpenters.

"Question 33. Were they at work when you got there?

"Answer. Yes, sir.

"Question 34. Tell what happened.

"Answer. I told them if they came up there first to come on down to the tipple and not have any trouble with them, come on down to the tipple and we would thrash it out down there.

"Question 35. Did you caution your men about having any trouble?

"Answer. Yes, sir. I told them not to have any trouble, to come on down to the tipple and we would thrash it out down there.

"Question 36. Did any of the United Construction Workers come to the schoolhouse before you left?

Bert Preston.

"Answer. No, sir.

"Question 37. From the schoolhouse where did you go?

"Answer. I went on down to the tippie.

"Question 38. How far was it from the schoolhouse to the tippie?

"Answer. About a mile and a half or a mile and a quarter.

"Question 39. When you got down to the tippie what was the situation down there?

"Answer. They were all sitting around the page 875 } store there, quite a bunch of them.

"Question 40. United Construction Workers?

"Answer. United Construction Workers.

"Question 41. How many would you say there were?

"Answer. I don't know, something like 40 or 50, I guess.

"Question 42. Did they have any leader or spokesman?

"Answer. I never stopped to hear any of their conversation.

"Question 43. What did you do?

"Answer. I went on down to the tippie from there.

"Question 44. I thought you said that group was at the tippie.

"Answer. No, sir. They were at the store.

"Question 45. How far from the tippie?

"Answer. Something like half a mile.

"Question 46. When you got past the store and went on to the tippie what was the situation down there?

"Answer. The carpenters were working. No one was interfering with them at that time. That was about 10 o'clock in the morning.

"Question 47. What happened then?

"Answer. There wasn't anything happened until when the boys laid off at noon and were eating their dinner, and I was walking around the tippie and this bunch came page 876 } and got out of their cars and went into the carpenters shed there and I followed them in.

"Question 48. Could all of them get in the toolshed?

"Answer. No, sir.

"Question 49. About how many were in there?

"Answer. I don't know how many, but I had to elbow to get in.

"Question 50. Did they have any spokesman for the United Construction Workers?

"Answer. Yes, sir.

"Question 51. What was his name?

"Answer. Hart.

Bert Preston.

"Question 52. What happened there?

"Answer. He commenced asking the boys to join up with the United Construction Workers, and they all told him they had cards with the American Federation of Labor and some of them showed him their cards, and he told them they would have to join the United Construction Workers if they worked, and I walked in and asked him what he wanted, and he turned around and asked me who I was, and I told him I was business agent for the Carpenters Union, Local 646, and he said he would talk to me, and he said we would have to join up with the United Construction Workers if we worked, and I told him we had a contract with Laburnum Construction Corporation to finish the tippie and schoolhouse, and he said if we wouldn't join up he would go to Beaver Creek
page 877 } and get two or three hundred men and come back, and he said, 'you see what that will mean.' And I said, 'No, I don't know what that means.' And he said, 'It means we will kick your ass out of here, if the lady will excuse me.'

"Question 53. What did you reply to that?

"Answer. I told him I had worked on Beaver Creek and knew a number of people on Beaver, and he said that he sure was going to see that we didn't work there on that job.

"Question 54. Did you see Mr. Bryan there that morning or that day?

"Answer. No, sir.

"Question 55. What was the outcome of your conversation in the toolhouse, what did it all lead up to?

"Answer. I told Mr. Hart I was going to take it up with the International organization and go to Mr. Hutcheson, the President of the Carpenters Local.

"Question 56. When you were in the toolhouse there were any of the fellows with Hart drinking?

"Answer. I don't know. I never seen them drinking any.

"Question 57. Did you smell any liquor?

"Answer. No, sir, I didn't.

"Question 58. Did you notice them drinking on the outside, any of the crowd with Hart there?

"Answer. No, sir.

page 878 } "Question 59. Did you notice any guns on any of that gang that was with Hart there?

"Answer. No, sir.

"Question 60. Did you see any marks of guns through their clothing?

"Answer. No, sir. I saw motions but no marks.

Bert Preston.

"Question 61. What kind of motions?

"Answer. When John Arnett told Hart he couldn't give his men what they were getting, he said, 'You are a damned liar,' and they made all kinds of motions, running their hands in their shirts. I told John Arnett to be quiet, that I would do the talking. It looks pretty suspicious to me that something could start awfully quick there, is what I thought.

"Question 62. What did John Arnett say?

"Answer. Hart was promising the men that came in there with him our jobs there.

"Question 63. How did the thing end up there in the tool-house and outside there during the lunch hour? What was the end of it?

"Answer. The end of it was that he was going to picket, and he told one of the fellows to walk out there and stand, and I told him we wouldn't recognize that kind of picket, that he would have to put up a card to show what he was picketing for.

page 879 } "Question 64. Did he do that?

"Answer. Yes, sir.

"Question 65. What kind of card did he put up?

"Answer. He got a pasteboard card and wrote on it, but I didn't see what he wrote on it.

"Question 66. Did he put it up?

"Answer. I don't know. I walked on over to the office.

"Question 67. Did anything else happen there?

"Answer. As I was walking along one of the laborers was walking along with his lunch kit in his hand and a fellow walked up and held out a card and said, 'Sign this.' And he said he wasn't going to sign it, and two or three fellows walked up and said, 'By God, sign this.' And he set his lunch kit down by his side and signed it.

"Question 68. Did Hart say anything about signing to you?

"Answer. He said we had to sign.

"Question 69. Did you advise your men to quit work?

"Answer. Yes, sir.

"Question 70. Who did you give your instruction to?

"Answer. Henry Starr.

"Question 71. What did you tell him?

"Answer. I told him they had put up a picket sign and we would recognize it.

page 880 } "Question 72. Were you afraid to go back to work there as a result of what Hart and his crowd had said and done?

Bert Preston.

"Answer. I wasn't working there, but I was afraid for the men to go back to work.

"Question 73. Why?

"Answer. I knew the condition over there. They don't care any more for killing you than sitting down at the table and eating.

"Question 74. What was the meaning of Hart's reference there to going to Beaver Creek and getting men?

"Answer. They have a reputation on Beaver Creek of being very bad, and they had taken a job on Beaver Creek from a Prestonsburg local.

"Question 75. You or Mr. Starr mentioned something about some men from Tiptop.

"Answer. They got these men from Tiptop.

"Question 76. What sort of reputation does Tiptop have?

"Answer. Tiptop is very, very bad.

"Question 77. What sort of set-up is it there at the tippie with reference to the hills and woods?

"Answer. A man working on the tippie was just a taget to men who know how to shoot like Breathitt County men do.

Mr. Mullen: If Your Honor please, we object to that answer as not responsive. It is not material and it states the opinion of the witness.

Mr. Robertson: I think it shows the occasion page 881 } for fear, Your Honor, and is material and relevant for that reason.

The Court: The Court sustains the objection. Disregard the question and the answer, gentlemen of the jury.

(Reading of the deposition continued as follows:)

"Question 78. Do the hills come right down close?

"Answer. Yes, sir.

"Question 79. And does that same situation exist there at the schoolhouse?

"Answer. Yes, sir; only worse. They can get on each side there at the schoolhouse.

"Question 80. Did you attend the meeting on August 2 which I think was the following Tuesday at Salyersville between your local and the local over there?

"Answer. Yes, sir, on Tuesday, August 2, 1949.

"Question 81. Who generally was at that meeting?

"Answer. Mr. Bryan was there, and we had two inter-

Bert Preston.

national men there, and the laborers had a man from Lexington.

"Question 82. What was the purpose of that meeting?

"Answer. We were trying to figure out a way of getting back to work.

"Question 83. Did Mr. Bryan have anything to say at that meeting?

"Answer. Yes, sir. Mr. Bryan was very interested in it and I told Mr. Bryan it was election time and it page 882 } was impossible to get an injunction in Magoffin or Breathitt County.

"Question 84. Did he want the men to get back to work?

"Answer. Yes, sir. He wanted the men to go back to work and to get a man hurt, so he could get an injunction, and we told him we would rather lose the job than get a man hurt.

"Question 85. Did Mr. Bryan ask a point-blank question if the men out of your local would go back to work?

"Answer. Yes, sir.

"Question 86. And then did he ask the men out of the local over at Salyersville if they would go back to work?

"Answer. Yes, sir.

"Question 87. And what did they tell him?

"Answer. They told him they wouldn't.

"Question 88. What did you tell Mr. Bryan?

"Answer. I told him it was very dangerous for the men to try to work.

"Question 89. And was it Robert Poe that spoke up for the Salyersville local?

"Answer. Yes, sir.

"Question 90. When I was questioning you about July 25, and 26, 1949, I failed to ask you if there was a meeting held here in Paintsville by your local on the night of July 26, 1949, which would have been Tuesday night.

"Answer. Yes, sir.

page 883 } "Question 91. Were you at that meeting?

"Answer. Yes, sir.

"Question 92. About how many men would you say were there?

"Answer. I imagine there were 30.

"Question 93. Was Mr. Bryan there?

"Answer. Yes, sir.

"Question 94. Tell us what happened at that meeting?

"Answer. Mr. Bryan still wanted us to go back to work, and I told him the conditions there, that he was from Richmond, Virginia and he never was in Breathitt County before,

Bert Preston.

and he insisted and I told him if he would put carpenter's clothes on and go with the men and stay with them, I would be willing for them to go back on Wednesday.

"Question 95. What did he say to that?

"Answer. He said he would.

"Question 96. And in consequence of that what did the men say they would do?

"Answer. They went back, several of them.

"Question 97. Was Mr. Bryan there on the morning of July 27?

"Answer. I wasn't there. I don't know.

"Question 98. So you don't know whether he did what he said he would do or not?

"Answer. No, sir.

page 884 } "Question 99. I believe you said you never worked over there.

"Answer. No, sir.

"Question 100. But you are a carpenter?

"Answer. That is right.

"Question 101. If you had been working over there and Hart had told you what went on there would you have been willing to go back to work?

"Answer. No, sir."

Mr. Mullen: Your Honor, I object to that. It is hypothetical and calls for a conclusion of the witness.

Mr. Robertson: If Your Honor please, you have ruled on it over and over again. It is relevant to show whether or not they had fear. The next two or three questions show that.

The Court: The objection is overruled, Mr. Mullen.

Colonel Harris: Reserve an exception.

(Reading of the deposition continued as follows:)

"Question 101. If you had been working over there and Hart had told you what went on there, would you have been willing to go back to work?

"Answer. No, sir.

"Question 102. Why?"

Mr. Mullen: Same objection.

The Court: Same ruling.

page 885 } (Reading of the deposition continued as follows:)

Bert Preston.

"Question 102. Why?

"Answer. I wouldn't want to get hurt.

"Question 103. Mr. Preston, what I have been trying to do here is to get you to tell, as far as you know it yourself, what happened there on this job from the time you received a request on Sunday to go over there the following day, and on through. Did anything occur there other than I have asked you about, that would throw further light on this?

"Answer. I don't remember anything else that happened over there.

"Question 104. Did anything happen anywhere else in this particular connection?

"Answer. Mr. Hart did come to Paintsville and sent for me on Wednesday and wanted to apologize for running us out over there. I asked him if he still had a picket up and he said he did, and I told him I didn't have any talk for him."

* * * * *

page 886 } Mr. Robertson: If Your Honor please, Mr. Preston concluded his testimony in deposition form, and he testified again at Paintsville on November 18, 1950, and I am going to ask permission to read that. It is very short. It covers matters about which he has been questioned by Mr. Harris. I don't have my copy from the office up here. I didn't know I was going to need it today. I can read the questions and answers. It is very short, three pages, I think.

(At this point the deposition of Bert Preston was read to the jury, Mr. Robertson reading the questions and the answers, as follows:)

"The witness,

BERT PRESTON,

having been first duly sworn, testified as follows, to-wit:

"DIRECT EXAMINATION.

"By Mr. Robertson:"

This is at Paintsville, Kentucky, on November 18, 1950.

"Question 1. Mr. Preston, your name is Mr. Bert Preston?

Bert Preston.

"Answer. It is.

"Question 2. You are the same Mr. Bert Preston who testified in the depositions which were given in this action in August, 1950?

"Answer. Yes, sir.

"Question 3. Mr. Preston, when you had the conversation with William O. Hart on July 26th, 1949, did you ask him why he did not shut down the tippie at the No. 1 Pocahontas Mine?

"Answer. Yes, sir.

page 887 } "Question 4. Will you state what it was you asked him and what his reply was?

"Answer. I asked him what was the reason he didn't shut the tippie down as well as us, and he said he had orders from Tom Raney not to shut it down that day.

"Question 5. Did he say anything about shutting it down at any later time?

"Answer. He said, 'not unless he had to; not to shut it down for a day or two unless he had to.'

"Question 6. When he made that remark to you, did you say anything about communicating with a man by the name of: William Hutchinson?"

Mr. Mullen: There is an objection there, Your Honor, on the ground of hearsay and immateriality.

Mr. Robinson: If Your Honor please, my recollection is that they have already cross-examined Bert Preston regarding his reference to William Hutchinson, and the purpose of this is to show who William Hutchinson is. I think it is relevant for that purpose, and tends to connect the local situation out there with the national office in Washington.

The Court: I will overrule the objection.

Colonel Harris: We reserve an objection.

Mr. Robertson: I will re-read the question:

page 888 } (The reading of the deposition continued as follows):

"Question 6. When he made that remark to you, did you say anything about communicating with a man by the name of: William Hutchinson?

"Answer. It was before that, that I told him I would take it up with William Hutchinson. It was when I was in the carpenter's shop.

Bert Preston.

“Question 7. Who is William Hutchinson?”

“Answer. He is president of the Carpenter’s Local, or Carpenter’s Union of the United States.

“Question 8. What was it you said to Hart about taking it up with William Hutchinson?”

Mr. Mullen: Same objection, Your Honor.

The Court: Same ruling.

Colonel Harris: Exception.

Mr. Robertson: There was no answer to that question.

(The reading of the deposition continued as follows:)

“Question 9. Now, Mr. Preston, what was your conversation with Mr. Hart regarding William Hutchinson?”

Mr. Mullen: Same objection.

The Court: Same ruling.

Colonel Harris: Exception.

(The reading of the deposition continued as follows:)

“Answer. I told him I would take it up with the page 889 } international officer, William Hutchinson, for him coming over there and running us out.

“Question 10. What did he say to that?”

“Answer. He said to let them thrash it out in Washington; for William Hutchinson and John L. Lewis to thrash it out in Washington.

“Question 11. On the 26th day of July, 1949, and also just after that, do you know whether or not a man by the name of Robert Poe was a business agent for the Salyersville Local, #697 A. F. of L.?”

“Answer. Yes, sir, he was.”

Mr. Robertson: I ask that Willard P. Owens come forward and be sworn.

Mr. Mullen: If Your Honor please, Mr. Owens is a member of the Legal Department of the United Mine Workers, has been working with us in this case, and everything he knows, he knows in his confidential relation as an attorney. He was not out there, nor a participant in anything that happened. He never went out there until we sent him out to get information for us. He is not a proper witness, under the circumstances.

Bert Preston.

Mr. Robertson: If Your Honor please, you remember that Mr. Owens has been constantly attending these pre-trial conferences.

The Court: Gentlemen, let us retire to chambers.

Mr. Robertson: I will ask Mr. Owens to stay
page 890 } out of this conference so I can tell the Court what
I have in mind.

The Court: The same ruling will apply in this instance with Mr. Owens as did with Mr. Bryan.

page 891 } (The following proceedings were had in cham-
bers:)

Mr. Robertson: May I ask you when you were employed in this case, Mr. Mullen?

Mr. Mullen: I don't know. My firm was employed a way back in the very beginning.

Mr. Robertson: Do you remember the approximate date?

Mr. Mullen: I could find out. It was certainly right after the suit was brought.

Mr. Robertson: Let's get the papers and see when this suit was brought. Get the Notice of Motion.

(Mr. Moore left the room to get the paper referred to.)

The Court: Colonel Harris, in regard to your motion for mistrial, it may be well for you to present me with an order filing same, and I will enter it as of the date you made your motion.

Colonel Harris: If we present it in the morning, will that be time enough?

The Court: That will be perfectly all right. I wanted to remind you of it.

Mr. Mullen: The suit was instituted on November 17, as I recall, 1949.

Mr. Robertson: That is right.

page 892 } If Your Honor please, I wish to call attention
to this: that at the first pretrial conference at
which Mr. Willard Owens appeared, which I think
might have been around October 12, you remember I asked
who he was, and he didn't want to disclose his identity. He
finally told who he was, and said that he was here as a specta-
tor and was not counsel in the case, and did not expect to
testify for any of the defendants in the case, and therefore
he thought he should be permitted to stay in the pretrial con-

ferences. The Court ruled in those circumstances that he might do so, and he appeared for them constantly, appeared with them constantly thereafter, in these pretrial conferences.

Now it develops that he, on the 8th day of December, 1949, long before he ever came in here but within 30 days after the suit was instituted, if you believe Bert Preston, was at Bert Preston's home taking a statement from him.

I propose to call him to the stand and ask him who he is, what his father's name is, and what position his father occupies with the United Mine Workers of America. I think there is nothing privileged about that. I think it is relevant and material, and that I have a right to ask it as tending to establish agency here between the United Mine Workers and what occurred out at the job site.

The Court: That is as far as you propose to go?

Mr. Robertson: Yes

page 893 } Colonel Harris: And we submit, if the Court pleases, that where a young man is employed as a lawyer and his employer is sued, the use of that young man in preparation of the defense is no ratification of anything that happened prior to the time the suit was brought. A union of the size of any one of these three necessarily has to have legal counsel; and for them to have legal counsel to defend lawsuits, it would be absurd to hold that having counsel to defend suits that are brought against them makes them responsible for the suit that is brought. That is what he is arguing.

Mr. Mullen: If Your Honor please, I can't see that they have any right to put him on the stand to ask him even those questions. They purposely say it will show agency. Any information that he has, he has as a lawyer. He was sent out there at our request, as was said, about 30 days afterward, to get some statements. All he said here was that he was not going to enter of record for the trial of the case, but he was an attorney being used in the case.

I have been called as a witness on three different occasions. I was not counsel in the case. It involved clients of mine. I always claimed immunity, and that was immediately allowed.

Mr. Robertson: We summoned this boy as a witness the first day he was here.

page 894 } Mr. Mullen: I know you did. You slipped out and summoned him the first day we were here. You had no right to do that, I believe.

Mr. Allen, There is no rule of law against calling an attorney as a witness. You may even call one that is at the bar, to the witness stand. I have done it. Of course, you

can't violate the rule of privilege. We don't propose to ask this witness anything that is privileged.

Mr. Robertson: Let me interrupt you there, and then I won't say anything more. I had this up with the Power Company over and over again. If you have a whole lot of other people present, it is not privileged. They had this fellow Noble Hobbs there. I have worked that out in Power Company cases. If you give something out to your stenographer, it is not privileged.

Mr. Mullen: You have already examined Hart, and we did not claim any privilege for him.

Mr. Allen: I called a lawyer in a case in the Federal Court in Washington, I called one of counsel at the bar trying the case, around to the witness stand, and asked him non-privileged questions. The Judge required him to answer them. I got some valuable information which helped me in the case.

We have a right to call any member of counsel trying the case, provided we don't ask improper questions.
page 895 } The Court of Appeals of Virginia said in the Robertson case, you don't have even to summon the witness. If he is present in court, you may call him to the stand. That is exactly what they said.

Mr. Robertson: That is what they did to me in that case, and made me open up my file.

The Court: I don't think there is any question about calling a witness if he is present in the courtroom, but do you have a case on calling an attorney?

Mr. Allen: If Your Honor please—

Mr. Robertson: I can tell you this, that Ed Preston has had cases in Law and Equity Court, Part 2, and I think he put Mr. Allen on the stand.

Mr. Allen: He did.

Mr. Robertson: If I am wrong, you can correct me.

Mr. Allen: That is correct.

Mr. Robertson: Mr. Allen intimated there was some rascality going forward, because Ed Preston interviewed his witnesses before the trial. Ed Preston thereupon called Mr. Allen to the stand and made him admit that he always did it and considered it his duty to do it.

Do you remember that, Mr. Allen?

Mr. Allen: That is exactly correct, and I took no exception to it because I thought he had a right. There has been no case in Virginia, so far as I know, passing upon page 896 } the right to call counsel, but I have never known of any case anywhere where it was held by any court that the opposing parties didn't have a right to call counsel to the witness stand.

Of course, if you ask questions that are privileged, then counsel claims the privilege for his client. It is the privilege of the client, however, and not counsel.

Mr. Mullen: It is the privilege of the client, yes, but the client can ask—

Mr. Robertson: I can give you cases on this, because I think I have tried about three for the Power Company.

For instance, here is a typical case of it: You catch a bus driver stealing. We have had them who admitted stealing \$40 or \$50 a week above their pay. He is some nice young boy who has come in from the country, and you feel sorry for him. You call him in and have a nice fatherly talk with him and try to get him straightened out.

We had it there with June Penick. June Penick's assistant was there, and June Penick's stenographer was there. I have forgotten whether anybody else was there or not. The lawyers were not there. Then the boy immediately goes out and sues you for defamation of character, and all that. I have fought, bled and died that those conversations were privileged, and have been overruled time and again that they were not.

page 897 } The Court: I understand you want to ask him his name and who he is, what his father's name is, and what the father does, and stop?

Mr. Robertson: Then if they want to cross-examine him about circumstances—

The Court: The Court will allow you to go that far and no further. I don't think that is privileged. I don't think those questions are privileged.

Colonel Harris: May we have our objection and exception in here, instead of having to repeat them in the presence of the jury?

The Court: Certainly.

Mr. Allen: That is all right.

Mr. Mullen: I don't think it is privileged to put him on the stand and ask him who he is, and he can testify he is a lawyer.

The Court: Those two questions, I understand, are all he is going to ask. He certainly didn't learn, by virtue of his relationship of attorney and client, that his father is Secretary and Treasurer of the United Mine Workers of America.

Colonel Harris: May we state our objection?

The Court: Certainly.

Colonel Harris: Our specific objection is on the ground of irrelevancy and immateriality, and in view of
page 898 } their statement that they want to prove who his father is to show ratification of participation by

Willard P. Owens.

the unions with which his father is connected, we object on the ground that by no process of reason does the identity of a lawyer used by defendant after he is sued operate to make the defendant a participant or one who ratifies a wrong claimed to have happened some months before.

Mr. Robertson: Just to keep the record straight, of course we have never said one word about ratification here. We have said we intended it to show the agency relationship. On the relevancy of what happened out there, the Court has already ruled, I think.

Colonel Harris: We reserve an exception to each ruling.
page 899 } (The following proceedings were had in open
court:)

The Court: Mr. Owens, will you take the stand?

Mr. Robertson: I don't think he has been sworn.

Mr. Owens: I was sworn the first day, Your Honor.

Whereupon,

WILLARD P. OWENS

called as a witness on behalf of the Plaintiff, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. What is your name?

A. Willard P. Owens.

Q. What is your father's name?

A. John Owens.

Q. What is your father's connection with the United Mine Workers of America?

A. He is Secretary-Treasurer of the United Mine Workers.

Mr. Robertson: Stand aside.

The Court: All right, stand aside.

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page 900 }

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JOHN HACKWORTH, JR.

called as a witness for Plaintiff, having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Hackworth, what is your full name?

A. John Hackworth, Jr.

Q. Where do you live?

A. Riceville, Kentucky.

The Court: Mr. Hackworth, speak as loud as I am talking
so these gentlemen in the jury can hear you.

By Mr. Robertson:

Q. How far is the place where you live from Paintsville,
Kentucky?

A. About 17 miles.

Q. In what county is your home?

A. Johnson County.

Q. How old are you?

A. 25.

Q. What kind of work do you do?

A. Carpenter work.

Q. Where are you working now?

A. I am working at the water plant at Paintsville, Ken-
tucky.

page 901 } Q. In town?

A. Yes, sir.

Q. Mr. Hackworth, are you a member of any union?

A. Yes, sir.

Q. Of what union is that?

A. I belong to the A. F. of L.

Q. What local?

A. 664.

Q. Whereabouts?

A. Paintsville, Kentucky.

Q. Were you working for Laburnum Construction Corpo-
ration on its Breathitt County work in July, 1949?

A. Yes, sir.

Q. I am calling your attention now to the week which be-
gan on Monday, July 25. What kind of work were you doing?

A. I was doing carpenter work on the schoolhouse build-
ing.

John Hackworth, Jr.

Q. Before that Monday morning had you as a member of the union been told that there would be any difficulty there that week?

A. Yes, sir.

Colonel Harris: We object to that on the ground that it is hearsay, if the Court pleases.

Mr. Robertson: It is the same ruling that the Court has made.
page 902 }

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. Before that Monday morning had you gotten any knowledge that anything unusual would happen there that week?

Colonel Harris: Same objection and exception.

The Court: Same ruling.

The Witness: Yes, sir.

By Mr. Robertson:

Q. What was that knowledge?

Colonel Harris: Same objection and exception.

The Court: Same ruling.

By Mr. Robertson:

Q. What had you heard?

Colonel Harris: Same objection and exception.

The Court: Same ruling.

The Witness: Mr. Hart had come up there, him and one more fellow to the job, the schoolhouse where we were working. So he came around where I was at, me and another carpenter. He said, I am Mr. Hart, representing the United Construction Company." He says, "We want you fellows to join up." He said "You will get more wages and," he says, "we have plenty of work here for you." He said "This is our job and we are going to have it. This is our work."

page 903 }

By Mr. Robertson:

Q. What day was it he came there that first time?

A. That is the first time.

Q. What day was it, if you remember?

A. The best I remember it was the 22nd day of July.

John Hackworth, Jr.

Q. Go ahead and tell the full conversation with Hart that day.

A. So I told him I belonged to the A. F. of L. and I didn't feel like I should change over. He said, "You can consider this and suit yourself." He said, "You will either change over or you will get out of this damned hollow."

I said, "I will not change."

Q. What was the next time you saw Hart?

A. That was on the 26th day of July.

Q. Were you working at the schoolhouse there on that Tuesday morning?

A. Yes, sir.

Q. How many men were working there, if you remember?

A. Roughly I would say there were around eight or nine men, carpenters.

Q. How close do the woods come down to that schoolhouse?

A. In places within 50 yards, I would say.

Q. When you saw Hart on Tuesday, about what time was it that you saw him?

page 904 } A. About 11:30.

Q. Did he come to the schoolhouse?

A. Yes, sir.

Q. Now state the circumstance under which he came there.

A. The starting of it was we knew that they were coming, they had said they would. I heard around three to four shots fired when they started up the hollow, that is from the company's store up to the schoolhouse. So in about I would say 15 minutes they came up the hollow where we were.

Q. How many men would you say came up there?

A. Roughly I would say from 35 to 50.

Q. Were any of them drunk?

A. They had all the appearance of being drunk. Three or four of them looked like they had all they could go with, and I could smell whiskey on them.

Q. Did you see any of them with guns?

A. No, sir; I didn't.

Q. Did you see any prints of guns?

A. The only thing I saw, the only thing that imitated his gun was they rubbed against me and it felt like a gun on them, one fellow did.

Q. Suppose you would be him and I would be you, show how he rubbed against you.

page 905 } A. He walked up to me like this, three or four of them. He rubbed up and said, "You will join now, won't you, by God?"

John Hackworth, Jr.

Q. What did you say?

A. I said "No, I will not join."

Q. Go ahead and tell what happened there at the school house.

A. They just kept gathering right on around us until they were all up there, you see, all of them. They were cussing and talking around. Some of them had their knives out whittling. Our carpenter foreman said, "Boys, we might as well quit." He said, "We might as well quit and have lunch."

We asked them, "Can we have lunch now?" And they said "Yes, go ahead and eat, but be damned sure you don't go back to work."

So we had lunch and after that Howard, our foreman, said "Boys, there is no use our sticking our necks out. We ain't got a chance." He said "We will just take our tools and go down to the tippie."

Q. Did they have you outnumbered?

A. Yes.

Q. How much?

A. I would say—there were 35 to 50. You could consider it 8 or 9 men.

page 906 } Q. Were your brothers working there with you that day?

A. Yes, sir; two of them were.

Q. So after lunch was Hart with the men at the school-house?

A. Yes, sir; he was until we started eating dinner.

Q. Then what happened to him?

A. He says "Enough of you men stay here that you make damned sure they don't go back to work and we will go on down to the tippie."

Q. After you finished lunch did any of the men there at the schoolhouse go back to work?

A. No, sir.

Q. Did you go back to work?

A. No, sir; I didn't.

Q. Why?

A. I was afraid to.

Q. Why were you afraid?

A. I was outnumbered, and it didn't make sense for me to stick my neck out.

Q. Then after you had finished lunch did you go on down to the tippie?

A. Yes, sir; I did.

Q. Do you remember who you went with?

John Hackworth, Jr.

A. I went with—the best I can recollect now was Howard Williams, the foreman.

page 907 } Q. Did you go directly to the tippie or did you go by the store and then to the tippie?

A. No, sir. We had to go close to the store, but we went straight to the tippie, though.

Q. What was the situation at the tippie when you got there?

A. First when we got there, there was a bridge crossing the branch before we got to the tippie. There were I would say eight or ten men standing there at the bridge. They said, "You fellows are not going across this bridge." I said, "Well, I don't want to work. I am going across the bridge to get some of my tools."

He said, "Go ahead, but be damned sure you don't go to work."

Q. Then you went from there on to the tippie?

A. Yes, sir.

Q. When you got down to the tippie what was the situation?

A. When I got down there all the boys had quit work and were standing around. There were several men on the ground. I would say by that time there were around 100 men there from their side.

Q. Were they men you knew, who had been working on the job, or strangers?

A. They were most of them strangers.

page 908 } Q. Was Hart there?

A. Yes, sir.

Q. Who was giving orders to the men or directing them?

A. Mr. Hart was.

Q. Did you go in to the toolhouse there while Hart was there?

A. No, sir; I didn't.

Q. Did you hear Hart make any statements down there at the tippie?

A. No, sir; I didn't hear Hart, but I heard some of his men.

Q. What statements did you hear from Hart's men?

A. They were walking around to the laborers telling them they had to join if they worked in that holler. They were just ganging around them like they thought they might run and get away or something.

Q. Did you see them make any laborers sign up any cards?

Colonel Harris: We object to his leading the witness.

The Court: The objection is sustained.

John Hackworth, Jr.

By Mr. Robertson:

Q. State whether or not you saw them make any laborers sign any cards.

A. I didn't see anybody sign any papers, but page 909 } I seen them go with one fellow—there were three of them. They had him by each arm. I did not see him sign any papers, though.

Q. Did you see anybody handling any bullets down there, either at the schoolhouse or at the tippie?

A. No, sir; I didn't.

Q. About how long did Hart and his crowd stay at the tippie?

A. They were there until about four or five o'clock that afternoon, the best I can remember now.

Q. I think you said you did not go to work at all that day.

A. No, sir.

Q. About what time did you leave there?

A. It was around 4:30, I guess.

Q. Did you attend a meeting of your local union in Paintsville that night?

A. Yes, sir; I did.

Q. About how many men do you think were at that meeting?

A. Roughly I would say 35 or 40 men.

Q. What was the purpose of the meeting?

A. The purpose of the meeting was to see if we could get things settled so we could go back to work.

Q. Was Mr. Bryan at that meeting?

A. Yes, sir.

page 910 } Q. Did he make a talk?

A. Yes, sir; he did.

Q. What did he say and what was said to him?

A. He said, "I think you boys are crazy for not going back to work." So we told him he didn't realize the circumstance of that place, that he was out of town and didn't know what trouble was. He said he wouldn't be a damned bit afraid to go. So our business agent said to him, "You put on a pair of carpenter overalls and lead this gang." He said, "Yes, sir; I will."

Q. Was there anything said about the men going over there carrying guns?

A. Yes, sir. The business agent said "If you men go, don't take less than two '38's."

Q. What did Mr. Bryan say to that?

John Hackworth, Jr.

A. He said to be sure we didn't take any guns or any weapons at all.

Q. Was any arrangement made as to where you would meet the next morning?

A. Yes, sir. We were supposed to meet at Salyersville at a filling station.

Q. Did you meet there the next morning?

A. No, sir. I was about 30 minutes late.

Q. Did you go over to the job site that morning?
page 911 } A. Yes, sir.

Q. About what time did you get over there?

A. I would say around 7:30 is when I got there.

Q. What happened when you got over there as far as you know it and took part in it.

A. I stopped at the timekeeper's office and Mr. Bryan came in there and said, "You fellows go to work and you won't lose any time for being late." So a couple of the boys—there were only three or four of us there at that time—a couple of them wouldn't go. Me and another fellow started. We went over to the tippie.

Q. When you got over to the tippie was anybody there?

A. Yes, there were.

Q. Who was there?

A. Practically all of our carpenters were there, and I would say around 75 to 100 men of theirs, of their organization.

Q. What were they doing?

A. They were doing the same thing they did before. They were running around walking around looking at one another, trying to get them to sign.

Q. Did you go to work that Wednesday?

A. No, sir.

Q. Why?

A. It didn't make sense. I had a wife and baby,
page 912 } and I didn't feel like I wanted to die because I
have had three or four chances at it myself.

Q. What time did you leave there that day?

A. The best I remember it was about 3:30 when I left.

Q. Have you ever worked over there since?

A. Yes, sir.

Q. When was that?

A. About two months later.

Q. After Laburnum left?

A. Yes, sir.

Q. Who were you working for when you went back after Laburnum left?

John Hackworth, Jr.

A. Codell Construction Company.

Q. Do you know whether or not they are working United Construction Workers?

A. Yes, sir; they are.

Q. Did you have to join up with the United Construction Workers to go to work with them?

A. I worked two weeks, and on the day before I quit one of their men came around with a piece of paper and said we had to sign it if we worked. So I signed the piece of paper, and the next day I quit.

Q. Were you in the armed services during World War II?

Colonel Harris: We object to that.

The Court: I will sustain that objection.

page 913 } Mr. Robertson: I don't want to press it, Your

Honor, but they said there wasn't anybody scared out there. I just wanted to show whether this man is susceptible to fear or whether he has been in danger in other circumstances.

The Court: I still sustain the objection.

Mr. Robertson: All right, sir.

The witness is with you.

CROSS EXAMINATION.

By Mr. Mullen:

Q. Mr. Hackworth, what date was it you said you first talked to Mr. Hart?

A. On the 22nd of July.

Q. Where?

A. Up at the schoolhouse.

Q. At that time he said he wanted you to join the United Construction Workers?

A. Yes, sir.

Q. That was the Friday before they came over and, as you claim, ran you off the work?

A. That was before they came to run us off.

Q. Who was the president of the local to which you belonged, of the A. F. of L.?

A. Monroe Sublett, I believe, the best I can remember. We have had two or three since then.

Q. Was he the man that you asked Mr. Bryan
page 914 } about putting on overalls and going with you?

A. No, sir.

John Hackworth, Jr.

Q. Who was that?

A. The business agent, Bert Preston.

Q. Didn't he ask Mr. Bryan, "Will you put on overalls, and lead us across the picket line"?

A. About that picket line I couldn't state how that came out.

Q. If any one else testified to that, you would not deny that is correct?

Mr. Robertson: That is why we separate the witnesses to keep them from ganging up. That is an improper question.

The Court: I think the separation of witnesses applies to both sides in this case, gentlemen. Repeat the question, please. Let me get the exact wording of the question.

(The pending question was read by the reporter.)

Mr. Mullen: I didn't state they had testified to that.

Mr. Allen: If Your Honor please, it is certainly an improper method in examining the witness to ask him if somebody else testified to so and so what would you say to that. That is not a proper way, I submit, to examine the witness.

Mr. Mullen: All right, Your Honor.

page 915 } The Court: Ask him if he affirms or denies.

By Mr. Mullen:

Q. Will you deny or affirm that that was said?

A. I will say that he said that he would put on a pair of carpenter overalls and lead the men to work. I don't recollect hearing him say about the picket line.

Q. I say that you saw three men around a man trying to make him sign?

A. Yes, sir. I didn't see them make him sign, but I saw they had him by each arm.

Q. Was that man a carpenter or laborer?

A. He was a laborer.

Q. You said also you saw them talking to the other laborers, didn't you?

A. The gang, yes.

Q. It was the laborers that they were asking to join when they were over there on the 26th, wasn't it?

A. They wanted all to join. He says, "You fellows will all join if you work."

Q. But you only saw him talking to laborers?

John Hackworth, Jr.

A. No, sir; they talked to me myself when I was down there.

Q. Did you see Mr. Hart on Monday, July 25th?

A. I don't remember that question.

page 916 } Q. You said you heard four or five shots. That was not at any of the places where the men were working, was it?

A. Well, they were working all around there, the whole job.

Q. But that was between the two points.

A. Yes, sir.

Q. It was around the bend of the road?

A. We had men working at the houses right next to where we heard the shots fired, and we had men working on up the holler and then down the road.

Q. Could you say where you saw the shots come from?

A. No, sir, I could not.

Q. You could say you just heard some shots?

A. That is right.

Q. You don't know who fired them?

A. No, sir.

Q. You didn't hear any men complain they had been shot at?

A. Not as I know of.

Q. Was anybody beaten up by any of these men who came there?

A. No, sir; not as I saw.

Q. Was anybody shot at?

A. Not as I seen.

Q. Was any property destroyed?

page 917 } A. No, sir; not that I know of.

Q. It was all talk?

A. It was all talk and action, yes.

Mr. Mullen: That is all.

Mr. Robertson: If Your Honor please, they used this witness' deposition in Paintsville as a guide in their cross-examination of him, and I ask that I be allowed to introduce it in evidence and read it to the jury just as we did in the case of the other witnesses.

Mr. Mullen: You are very much mistaken in my using it. I didn't refer to it a single time.

Mr. Robertson: I saw you looking at it.

Mr. Mullen: But I did not ask a question based on it.

Mr. Robertson: But you and Mr. Harris put your heads together and then looked at the thing to ask the question.

John Hackworth, Jr.

The Court: I don't think Mr. Mullen quoted anything from it.

Mr. Robertson: I don't think he quoted it directly, but I think I have a right now to introduce the deposition to the jury to show whether this witness is testifying the same today or differently in substance from what he did before, so they can determine his credibility.

Mr. Mullen: I think when the witness is page 918 { present and testifies, the deposition is not properly introduced.

Mr. Robertson: You let the other one in. Why do you object to this one?

The Court: As presently advised the Court sustains the objection.

We will now recess, gentlemen, for five minutes.

(Brief recess.)

page 919 { The Court: Who is your next witness, Mr. Robertson?

Mr. Robertson: Before the next witness, Your Honor, these witnesses from Kentucky are laboring men whose jobs are being held for them, and I would like for them to be excused so that they can go home after they testify, if that is agreeable.

The Court: Is there any objection on behalf of counsel for the Defendants?

Mr. Mullen: I don't think we object. There is no reason, after they have testified, for keeping them.

The Court: All right, that is satisfactory with the Court and satisfactory with all counsel.

Mr. Robertson: Norman Hackworth.

The Court: Does that agreement apply to all witnesses who have testified?

Mr. Mullen: That applies, so far as we are concerned to all witnesses.

The Court: All witnesses who have testified for the Plaintiff up to the present time, with the exception, of course, of Mr. Bryan.

Mr. Mullen: Any time we want to make an exception, we will ask the Court as they leave the stand.

The Court: All right.

Mr. Robertson: Come around and be sworn, Mr. Hackworth.

page 920 } Whereupon,

NORMAN HACKWORTH,
called as a witness on behalf of Plaintiff, having been first duly
sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Hackworth, your name is Norman Hackworth?

A. Yes, sir.

Q. Are you a brother of Mr. John H. Hackworth, who testified a few minutes ago?

A. Yes, sir.

Q. Have you another brother named Robert Hackworth?

A. Yes, sir.

Q. How old are you?

A. Thirty-five.

The Court: What is your first name?

The Witness: Norman.

By Mr. Robertson:

Q. Where do you live?

A. Riceville, Kentucky.

Q. How far is that from Paintsville?

A. About 10 miles.

Q. How far is it from the Laburnum job site in Breathitt County?

A. It is 45 miles, close to 45.

page 921 } Q. How big a town is Riceville?

A. Just a small village.

Q. How old are you?

A. Thirty-five.

Q. What kind of work do you do?

A. Carpenter work.

Q. Are you connected with any union?

A. A. F. of L.

Q. What is your Local?

A. 646, Paintsville, Kentucky.

Q. Where are you working now?

A. I am not working now.

Q. Were you working for Laburnum Construction Corporation in July, 1949?

A. Yes, sir.

Q. What kind of work were you doing?

Norman Hackworth.

A. I was doing carpenter work.

Q. Were you working at the schoolhouse or at the tipple or at the store?

A. I was working at the schoolhouse.

Q. Were your two brothers also working there?

A. Yes, sir.

Q. I call your attention now to the week which began on Monday, July 25, 1949. Before that morning, did you have any contact with a man named Hart about your work there?

A. No, sir.

page 922 } Q. What was the first time you had anything to do with Hart?

A. On July 26, 1949.

Q. Tell us what happened there at the schoolhouse that day?

A. About a quarter of 11, a quarter after 11, we were working at the schoolhouse, putting in the foundation. I heard some shots down the road, and in about two or three minutes I seen a big gang of men coming around the curve. The rumor had been around that they were coming to run us off the job, United Construction.

Q. How many men would you say were in that group that came around the bend in the road and up to the schoolhouse?

A. I don't know the exact number, but there must have been between 35 to 50 of them.

Q. Was anybody in charge of them?

A. Yes, sir.

Q. Who was that?

A. Mr. Hart.

Q. Were those men walking or riding?

A. They were walking.

Q. What sort of crowd of men were they?

A. It was a rough looking gang to me. Some of
page 923 } them—I would say part of them were drunk, or at least they were drinking pretty heavy. You could smell whisky on their breath.

Mr. Hart comes up and makes himself known to us. He comes over to me with a—

The Court: Talk a little louder.

The Witness: He comes up to me with one of his application blanks and said, "Are you going to join United Construction?" And I said, "No." He said, "God damn you, if you work here, you are going to join the United Construction." I said, "I have been carrying my book too long with the

Norman Hackworth.

A. F. of L. to quit and join the United Construction, and I am not going to do it." He said, "You are not going to do it?" He said, "God damn you, we will kick you out of here."

I didn't have any other choice more than to go ahead and leave the job, because I knew the reputation of those people in that country. It was very bad. I didn't want to get killed, and I felt if I worked on there, I would get killed. So whenever they told us we had to quit, we stopped to eat lunch. Hart told part of his men to stay there at the schoolhouse to see that the gang that was working there with us didn't go back to work after lunch. He left 10 or 12, I would say, and they told him they would see that we damned sure didn't strike another tap on that schoolhouse, regardless of what it took to stop us.

page 924 } By Mr. Robertson:

Q. Did you go back to work there after lunch?

A. No, sir.

Q. Why?

A. Because I was afraid to.

Q. What did you do after lunch?

A. After lunch, I gathered up the company's tools and put them in my car and drove them down to the tool house and put them away.

Q. Was the tool house at the tippie?

A. No, sir. They had one tool house at the camps up above the tippie.

Q. Did you go to the tippie?

A. Yes, sir, I did go down there.

Q. What was the situation at the tippie when you got down there?

A. I didn't go to the tippie. I went across from the tippie in the road. The men all seemed to be mixed up over there. There wasn't any of them working. They just kept marching around. I didn't go over to the tippie. Some of the men who were riding with me come from the tippie over to my car at the road, and we come home.

Q. How close to the tippie did you get?

A. Oh, I would say 700 feet of the tippie.

Q. Why didn't you go on over there?

page 925 } Colonel Harris: We object to that as an uncommunicated mental operation of the witness.

Mr. Robertson: I think he has a right to show why he was scared to go or whether there was some other reason that he didn't go.

Norman Hackworth.

The Court: I overrule the objection.

By Mr. Robertson:

Q. Why didn't you go?

Mr. Harris: We reserve an exception.

The Court: Same ruling.

The Witness: The reason why I didn't go to the tippie was because I didn't want to go over there. They told me I wasn't going to work any more, and I didn't want to get around where they were at, because I felt maybe some of them would stick a knife in my back or shoot me.

By Mr. Robertson:

Q. Did you ever go back to work over there after that?

A. I went back, but I didn't go to work.

Q. When did you go back?

A. I went back the next morning, July 27.

Q. What happened over there then, that Wednesday morning?

A. I came to the company's office, and Mr. Bryan asked me if I was going to work. I told him, "No."

Colonel Harris: We object to the conversation page 926 } between him and Mr. Bryan as hearsay, if the Court please.

Mr. Robertson: It is relevant for the same reason, Your Honor, to show whether the man was scared to go work or not.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception; and may we have an objection and exception to that entire line of questions?

The Court: You may.

By Mr. Robertson:

Q. What was your conversation with Mr. Bryan?

A. He asked me to go to work, and I told him I wasn't going to work. He asked me why. I told him I thought a lot more of my life than I did of that job of work; that I feared I would be killed if I went back to work.

Q. How long did you stay there at the tippie?

A. I stayed there about an hour.

Q. I took it up a little out of order.

Norman Hackworth.

After you left the job site on Tuesday, July 26, did you attend a meeting of your Local in Paintsville that night?

A. Yes, sir.

Q. What was the purpose of that meeting?

A. The purpose of that meeting—

Colonel Harris: May we have an objection to
page 927 } all questions on that line, on the ground of hearsay and immateriality?

The Court: Very well.

Colonel Harris: And an exception.

By Mr. Robertson:

Q. What was the purpose of that meeting?

A. The purpose of that meeting was Mr. Bryan was trying to urge us to go back to work, not let them run us out of there. So we told Mr. Bryan he didn't know the danger of those people in that country; that he didn't know their reputation; and there wasn't any law protection out there, and we didn't have any way to protect ourselves unless we wanted to go to the means of taking guns in there with us and doing our own fighting, and we didn't think that was the proper thing to do and get a bunch of our men killed and kill up somebody else.

Mr. Bryan still demanded that we go back to work. We told Mr. Bryan to put his overalls on and cross the picket line and go on down ahead of the men, and we would all go to work.

When we got over there the next morning —

Q. Did Mr. Bert Preston say anything about whether or not you should go armed?

A. Mr. Bert Preston said if we went over there, to go over there taking guns with us to protect ourselves. I
page 928 } I remember he said to take at least two good guns.

Q. What did Mr. Bryan say to that?

A. Mr. Bryan objected to that. He said he didn't want any man taking a gun over there at no time.

Q. Did they agree that they would meet anywhere the next morning?

A. Yes, sir.

Q. Where was that?

A. They agreed to meet at Salyersville at a filling station, and the crew would all leave together.

Q. Did you meet there with them?

A. I got there—I didn't meet there with them. I got there

Norman Hackworth.

about five minutes after they had pulled out for Breathitt County.

Q. I think you have already stated what happened over there when you got over there. Did you go back there any more after that day?

A. No, sir.

Q. Have you ever worked there since, for Laburnum?

A. No, sir.

Q. Why?

A. Laburnum don't have any job over there any more, and the United Construction and United Mine Workers has got the work in that section. I don't belong to the United Mine Workers or United Construction, and for that page 929 } reason I don't work over there. I wouldn't work over there, anyway, after this all come about, if they offered me a job.

Q. Why?

A. Because I would be afraid to go back over there.

Q. Do they let you work over there if you don't join up with the United Construction Workers?

A. No, sir.

Q. At any time, have you helped Robert Poe to get membership applications for laborers that worked over there?

A. Yes, sir.

Q. When was that?

A. I wouldn't say just exactly the date it was, but it was a week or more before this all come about.

Q. How did you happen to help him get membership applications?

A. Mr. Frank Dixon gave me the applications, and told me to take them in there and help to organize the men, the laborers.

Q. Did any of the Laburnum people tell you that you had to join the A. F. of L., or you couldn't work?

A. No, sir.

Q. Did any of the Laburnum people tell you to turn the heat on them to make them sign up?

A. No, sir.

Q. Did you turn the heat on them to make them page 930 } sign up?

A. No, sir.

Colonel Harris: We object to that as calling for a conclusion of the witness.

Mr. Robertson: The witness is with you.

Norman Hackworth.

The Court: Do you wish to reply to the objection, Mr. Robertson?

Mr. Robertson: Sir?

The Court: Do you want to reply to the objection?

(The last question and answer were read by the reporter.)

Mr. Robertson: I assume, Your Honor, that they are going to claim that we put the heat on them to make them sign. Mr. Mullen has already said here that if the boss sends anybody out to sign up for the union, that is practically a threat in itself.

The Court: I will allow the question for what it is worth.
Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. When that crowd came there to the schoolhouse on Tuesday, July 26, did you see anybody handling any bullets?

A. Yes, sir.

Q. What was that?

A. They would run their hand down in their pocket and pull out a handful, looked to me like, .38 pistol shells, page 931 } and would roll them from one hand to the other. The man was practically drunk. I would say he was drunk.

Q. Was there any rough talk there at the schoolhouse?

A. Yes, sir, there was.

Q. Just tell us what it was. Make it as rough as it was or just as smooth as it was.

A. I don't remember the words that were spoken, but one man they talked to was Henry Harland Houchell, and they talked very rough to him. I don't remember the words that were said, but it was more than I would want to talk about, and I would be afraid to tell you.

Q. What was it?

A. I don't remember what was said. The only thing I remember about it, I remember they talked very rough to him.

Q. Did you see anybody with any knives there?

A. Yes, sir.

Q. What kind of knives?

A. They were pocket knives, but they wasn't no penknives.

Q. What were they doing with them?

A. They were whittling around on sticks.

Q. How long were the blades of those knives?

Norman Hackworth.

A. I wouldn't say the exact measurement of the blades or anything of the kind, but they were big knives.

Q. Did anybody call you a son-of-a-bitch?

page 932 } A. No, sir, they didn't.

Q. Did you hear them call anybody else that?

A. Yes, sir.

Q. Did the fellow who was called that take it?

A. Yes, sir.

Q. Why?

Colonel Harris: We object to that.

The Court: I sustain the objection.

By Mr. Robertson:

Q. When you went to get people to sign up application blanks to join the A. F. of L., what did you say to them?

Colonel Harris: We object to that as hearsay and immaterial and irrelevant.

Mr. Robertson: The reason I am asking it, Your Honor, I reckon later on they will claim that the witness gave a conclusion. I am trying now to go into enough particulars that he will be stating facts and not conclusions.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. What would you say to them when you tried to sign them up?

Colonel Harris: Same objection, and exception.

The Court: Same ruling.

page 933 } The Witness: I only asked them if they wanted to sign up with the A. F. of L., and I told them that I thought it would be better for them; that they would get better wages, that we would all like to be organized and work together. I didn't tell anybody they had to join the A. F. of L. I didn't try to force anybody to join it. I only tried to help them out. I had talked to them along time before that, trying to get them organized.

By Mr. Robertson:

Q. Was Robert Poe with you on a number of those occasions, or were you pretty much by yourself?

A. Robert Poe was with me on some of them, and I was by myself on some of them.

Mr. Robertson: I have no other questions.

Norman Hackworth.

CROSS EXAMINATION.

By Mr. Mullen:

Q. Are you a member of the union now?

A. Yes, sir.

Q. What is it?

A. 646, A. F. of L., Paintsville, Kentucky.

Q. That is the same union that had men on the job for Laburnum?

A. Yes, sir.

Q. You were a member of it at that time?

A. Yes, sir.

Q. You state that you signed some of the men
page 934 } up about a week before these happenings?

A. Yes, sir, something like that.

Q. You are very certain of that?

A. I wouldn't say for sure it was a week, that it was more than a week or less than a week, but it was pretty close to a week.

Q. It was pretty close to a week. It wasn't as early as the first part of July, was it?

A. No, sir, it wasn't.

Q. It wasn't as early as the 10th of July, was it?

A. No, sir.

Q. Did you see any guns?

A. No, sir, I didn't.

Q. You said some of the men had knives and were whittling. Whittling is a kind of common occupation among men when they are not working, isn't it?

A. It might be for some men, I don't know, but the way they were going around among us men at the time, with 8 or 10 or 12 men crowding up around us, each one of us there, with a knife in his hand and whiskey smelling on his breath, those knives didn't look too good. It didn't look to me as though they meant just to whittle a stick.

Q. Did anyone ever make a pass with one of the knives?

A. Nobody made a pass at me.

Q. You say you had talked to some of the labor-
page 935 } ers before about joining. Had they refused, when you talked to them before?

A. No, sir, they hadn't. They seemed to want to get lined out to join it, but they never could make up their minds and all of them get together.

Q. What does it cost to join the Paintsville Local Union?

A. The Carpenter's Local?

Norman Hackworth.

Q. Yes.

A. It cost \$50.

Q. What are the dues?

A. \$1.50 a month.

Q. So these laborers would have had to pay \$50 to join?

A. I don't know what the laborers' initiation fee is, and I don't know what their dues would have been. I never looked it up. But I think it was \$10 that it cost them to join.

Q. Did you see any picket signs on the work? You were there on the 26th, you say?

A. There wasn't any picket signs at the schoolhouse.

Q. Were there any anywhere else?

A. I didn't see any on the 26th. I didn't go over to the tipple where they were working, where some of them had put up a picket sign, I understood.

Q. You understood they had put up a picket sign?

A. Yes, sir.

page 936 } Q. What did you do with the cards that you got signed up by the laborers?

A. I turned over what cards I got signed up to Bob Poe, Robert Poe.

Q. You don't know what he did with them, do you?

A. No, sir, I don't.

.

Q. Who filled in the cards that you got signed?

A. I filled them in.

Q. All you asked the man was to sign his name?

A. Yes, sir.

Q. Do you know how many you filled in?

A. I don't remember the number I filled in.

Q. You didn't fill them all in, did you?

A. No, sir.

Mr. Mullen: I have no more questions.

page 937 } Mr. Robertson: If Your Honor please, I offer this witness' testimony at Paintsville and ask that I be permitted to read it to the jury and introduce it in evidence in corroboration of the testimony the witness gives here today.

Mr. Mullen: I object to that, Your Honor.

The Court: I sustain the objection.

Mr. Robertson: That is all, Mr. Hackworth.

The Court: Stand aside, Mr. Hackworth.

(Witness excused.)

Robert Hackworth.

Mr. Robertson: Mr. Robert Hackworth.

Whereupon,

ROBERT HACKWORTH

called as a witness for Plaintiff, having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Hackworth, your name is Robert Hackworth?

A. Yes, sir.

Q. I will ask you to speak loud enough for all these gentlemen to hear you, please.

Where do you live?

A. Riceville, Kentucky.

The Court: Where?

The Witness: Riceville, Kentucky.

Mr. Robertson: R-i-c-e-v-i-l-l-e. I have been
page 938 } out there.

The Court: Mr. Hackworth, talk as loud as I
am talking so all these gentlemen can hear you.

By Mr. Robertson:

Q. How far is Riceville from Paintsville?

A. It is about 15 miles.

Q. How far is Riceville from the Laburnum site in Breathitt
County?

A. I would say it is 25.

Q. How big a town is Riceville?

A. It is not much of a town at all, just a small village.

Q. How old are you, Mr. Hackworth?

A. 38.

Q. Are you a brother of Mr. Norman Hackworth and Mr.
John Hackworth, who have both testified here this morning?

A. Yes, sir.

Q. What kind of work do you do?

A. Carpenter work.

Q. Where are you working now?

A. I am not working at carpenter work now.

Q. Are you a member of any union?

A. Yes, sir.

Q. What union?

Robert Hackworth.

A. 646, Paintsville, A. F. of L.

page 939 } Q. Were you working for the Laburnum Construction Corporation in July, 1949?

A. Yes, sir.

Q. I call your attention now to the week that began on Monday, the 25th of that July. Tell us where you were working then. Do you remember where you were working then?

A. Pardon me?

Q. I say on the week that commenced on Monday, July 25, 1949, were you working for Laburnum then?

A. Yes, sir.

Q. Where were you?

A. At the schoolhouse.

Q. Do you remember whether or not you had had any talk or heard any talk of William Hart before that Monday?

Mr. Harris: We object to that on the ground it is hearsay.

Mr. Robertson: It has the same purpose.

The Court: Do you have anything more you want to say?

Mr. Robertson: It is the same objection he has made time and again, Your Honor.

The Court: The objection is overruled.

Colonel Harris: Of course every time he asks the question we have to object.

The Court: That is true.

page 940 } By Mr. Robertson:

Q. Do you remember whether or not you either had any talk yourself with Robert Hart before that Monday morning or whether you heard any talk by him before that Monday morning?

A. No, sir, I did not.

Q. When you went to work that Monday morning, July 25, at the schoolhouse, did anything happen that day or did you work on through the day?

A. The 25th?

Q. Yes.

A. We worked through the day.

Q. On Tuesday, the 26th, what happened?

A. There wasn't anything happened that I knowed of on the 26th. You mean on the 26th of July?

Q. Yes.

A. Sure.

Robert Hackworth.

Q. There is a calendar there which you can watch to keep your mind straight.

* * * *

By Mr. Robertson:

Q. Were you there at the schoolhouse when Hart came there with a crowd of men?

A. Yes, sir.

page 941 } Q. Tell what happened.

A. You want me to tell when he came there the first time or the time with the crowd of men?

Q. I want you tell the first time he came first, and then the second time. Tell about the first time first.

A. It was on the 21st or 22nd of July, the best I remember, that he came there. He asked us to join the United Construction. He said "We are taking this job over." We told him, "No, we wouldn't join," that we already belonged to a local.

He said, "Well, you make up your minds. We are coming back." He said, "I am going to take this job over. If you work here you are going to have to join up with us." So he left. Then on the 26th, the following day, he came back with a bunch of men. He came up to the schoolhouse where we were working.

Q. How many men would you say were with him?

A. I would say there were—the best of my memory, 30 or 40, I guess. It could have been more.

Q. Tell the jury what happened when they came there to the schoolhouse.

A. They came up, and they just rushed right up on us and crowded right up and said, "All right, boys, we are here now. Are you going to join up with us or not," and we said "No, we are not." They said, "All right, if you are not you are going to have to quit work."

page 942 } I said to Mr. Hart, "Well, let's talk just a minute." "No," he said, "I have no damned talk for you." He said, "You fellows are just going to have to quit, that is all there are to it. We don't want to have to get rough with you."

We all just quit and went up to eat our lunch. It wasn't hardly the lunch hour, but we quit. I don't remember how many there were, but he told some of them to stay there and see that we didn't work any more. He said, "The rest of us will go down to the tipple."

Robert Hackworth.

We went up there and sat there and ate our dinner, our lunch. Then after we ate our lunch we gathered our tools all up and put them in our boxes and went down to the company's store there. Then those men came on down to the tippie.

Q. When Hart and his men came there to the schoolhouse, was it a bunch of men that you knew or were they strangers?

A. They were strangers, most of them were. There may have been—I never looked, you know, to notice them enough to see if there were any in the bunch. They were in a crowd. There may have been some of the boys that I worked with there before as laborers, but I don't—

Q. Were any of them drunk?

A. There were part of them that were acting
page 943 } drunk, you know, like they had been pretty tight,
I will say.

Q. Did you smell any liquor?

A. Yes, sir; I did.

Q. Did you see any guns?

A. No, sir.

Q. Was there any cussing there?

A. Yes, sir.

Q. What words did you hear used?

A. I said to Hart, "Let's talk a minute," and he said "I have got no God-damned talk for you."

* * * * *

The Witness: Those men there were cursing around, you see, and every time Hart would say something, they maybe would curse, and you know, backing him up something like that.

By Mr. Robertson:

Q. Did anybody call you a son-of-a-bitch?

A. No, sir.

Q. Did they call you anything else?

A. No, sir.

Q. How many did they have you outnumbered?

A. I guess we were outnumbered, the best of my opinion we were outnumbered six to 1.

Q. After you gathered up your tools you say you went where?

page 944 } A. We went back down the road apiece there
to a company store where we left our cars and

Robert Hackworth.

things and we loaded our tools in a car. Those men that guarded us there until we quit work, went on down to the tippie where the rest of the gang went.

Q. Did you go on down to the tippie?

A. No, sir; not that day.

Q. Why?

Mr. Harris: We object to that, if the Court please, as calling for an uncommunicated mental operation.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. Why didn't you go down to the tippie?

Colonel Harris: Same ruling.

The Witness: They said they were going to stop everything, so I knew we had to stop up there. I just never drove on down to the tippie. I waited there until the rest of the gang came out.

By Mr. Robertson:

Q. Were you scared to go to the tippie?

Colonel Harris: Same objection.

The Court: Same ruling.

Colonel Harris: An exception.

page 945 } By Mr. Robertson:

Q. Were you scared to go to the tippie?

Colonel Harris: Same objection.

The Court: Same ruling.

By Mr. Robertson:

Q. Will you answer the question?

A. Sure.

Q. Why?

Colonel Harris: Same objection and exception.

The Witness: I figured they would have trouble or something down there and I didn't want to get involved enough to maybe get hurt or be killed or something.

By Mr. Robertson:

Q. Did you attend the meeting of Paintsville local that night?

Robert Hackworth.

A. Yes, sir.

Q. Did you hear what went on there?

Colonel Harris: May we have an objection on the ground of hearsay to this line of questioning?

The Court: The objection is overruled.

The Witness: I heard a part of what went on there.

By Mr. Robertson:

Q. State what went on there so far as you heard it.

A. Well, it was late after the meeting started when I got in, and Mr. Bryan was there. He was talking
page 946 } about wanting us to go back to work. Some of the boys said to him, "Will you put on a pair of carpenter overalls and lead us in there to our job?" He said "Yes, sir; I will."

Q. Was anything said about whether they would carry guns or not if they went back?

Colonel Harris: Your Honor gave us an exception to this line?

The Court: Very well.

The Witness: Some of them said "If you go back there you are liable to get killed if you are not protected some way."

Mr. Bryan said, "No, we don't want you to take any guns or anything."

By Mr. Robertson:

Q. Then did they make any arrangement as to how they would go the following day?

A. Yes, sir. They were supposed to meet at Salyersville, and all go in together.

Q. Did you go over there the next day?

A. No, sir. I went through there, but the gang had all gone in. I went in late.

Q. Did you go on over to the job site after the other men had gone ahead of you?

A. Yes, sir.

Q. About what time did you get over there?

A. I suppose it was 8:30, maybe nine o'clock.
page 947 } I wouldn't say for sure.

Q. What was the situation when you got over there?

Robert Hackworth.

A. When I got over there I noticed the man over at the tipplem so I never went on over to the job myself. I stopped at the office. I noticed they were fixing to come out with their tools and things and I just never went on over.

Q. Did you sort of hang back a little and go back over there late on purpose?

A. You mean after they came out?

Q. No, I mean—

A. Sure.

Q. From Salyersville.

A. Yes, sir; I did.

Q. Why did you do that?

Colonel Harris: Same objection and exception.

The Court: Same ruling.

The Witness: I couldn't make up my mind to go back to work. I just dreaded to go in there and probably start work and maybe get killed or something. I didn't want to do that. I finally decided to go. I intended to work if they were working and had everything settled down. I wasn't sticking my neck out.

page 948 }

CROSS EXAMINATION.

By Mr. Mullen:

Q. You say you talked to Mr. Hart on the 21st or 22nd?

A. Yes, sir.

Q. Did you report that talk to anyone?

A. Yes, sir.

Q. To whom?

A. Some of the members who were working.

Q. Do you know whether it was reported to Mr. Delinger?

A. No, sir; I don't know whether it was reported to Mr. Delinger or not.

Q. Those who came with Mr. Hart, you say you knew some of them, that some of them had worked with you. Were those that you knew or among those you knew some of the laborers on the Laburnum job?

Robert Hackworth.

A. Those that came with him, the best I can remember, it seems that I had seen two or three of those laborers that I had been working with. I couldn't call their name because I never found out many of their names. I never fooled with them too much.

Q. You just recognized them as some of the laborers that you had been working with?

A. That is right.

page 949 } Q. At the meeting on the night of the 26th of
of the Paintsville Union, Mr. Sublett was the man
who asked Mr. Bryan the question was he not?

A. I don't remember.

Q. Whoever asked, you remember the question being asked as to whether he would put on overalls?

A. Well, no, I don't remember just exactly who asked him the question to do that, but I heard it mentioned and heard whoever it was as it, but I don't remember at this time who it was.

Q. You remember that the question was asked?

A. Yes, sir.

Q. Wasn't the question asked Mr. Bryan, "Will you put on overalls and lead us across that picket line?"

A. No, sir; not as I remember it.

Q. You don't remember that?

A. No, sir.

Q. Did you see the picket signs there?

A. No, sir.

Q. You didn't see any of them?

A. I did not.

Q. Did any of your fellow workers report to you that there were picket signs?

A. That there were picket signs?

Q. That there were picket signs there.

page 950 } A. I heard some of the boys say something
about there being some signs there, but I don't
know what they were. I never seen them.

Mr. Mullen: I have no further questions.

Mr. Robertson: I have nothing further. If Your Honor please, I offer in evidence the testimony of this witness at Paintsville and ask that I be allowed to read it to the jury.

Mr. Mullen: Same objection, Your Honor.

The Court: The objection is sustained.

Gentlemen, we will recess for lunch and come back at 2:15.

Jack Patrick.

(Whereupon, at 12:50 o'clock p. m. the Court was recessed until 2:15 o'clock p. m. the same day.)

page 951 } AFTERNOON SESSION.

2:15 p. m.

Mr. Robertson: Jack Patrick, please.

This witness has not been sworn.

Whereupon,

JACK PATRICK
called as a witness for Plaintiff, having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Patrick, your name is Jack Patrick?

A. That is right.

Q. How old are you?

A. 42.

Q. Where do you live?

A. Paintsville, Kentucky.

Q. What kind of work do you do?

A. At the present time I am engaged in the mining business.

Q. What kind of work were you doing in July, 1949?

A. Carpenter work.

Q. Do you run your own mine property?

A. I do now, yes, sir.

Q. How many men do you work there?

A. From 12 to 18.

page 952 } Q. Do you just dig the coal out and load it in
a truck and sell it yourself?

A. That is right.

Q. Are you affiliated with the A. F. of L. local union in Paintsville?

A. I am a member of it.

Q. Were you a member of it in July, 1949?

A. I was.

Q. Were you working for Laburnum Construction Company in Breathitt County, Kentucky in July, 1949?

Jack Patrick.

A. I was.

Q. I call your attention now to the week that began July 25, 1949, the Monday of that week. Were you working there that day?

A. I was.

Q. Before that time did you receive any report that the United Construction Workers were going to run you off the job?

A. I did.

Colonel Harris: Just a moment, please. We object to that on the ground that it is illegal, irrelevant, immaterial, incompetent, and hearsay.

The Court: The objection is overruled.

Colonel Harris: We ask an exception.

If the Court pleases, in order to save time and to speed up the trial, can we have objections to every question of that sort that deals with a rumor or report with reference to what they were to expect, and an exception?

Mr. Robertson: There is no objection.

Mr. Allen: No objection.

The Court: Very well.

By Mr. Robertson:

Q. What was the report you got as a member of the union that the United Construction Workers were going to run you off the job?

A. That they were coming in there and were going to take the job.

Q. On Monday, July 25, where were you working?

A. I was working at the bottom of the hill on the mine tipple.

Q. Did anything happen that Monday, did any trouble occur that day?

A. No, sir; I don't believe there did. I believe it was on the following Tuesday.

Q. Tell what happened there that Tuesday while you were there, what you saw and heard and did

A. Well, this fellow—it was noontime and we were all having lunch at this time.

The Court: Mr. Patrick, take your hand away from your face, please.

Jack Patrick.

The Witness: We were in the shed and were
page 954 } all having lunch. This fellow Hart, as I later
found him out to be, comes in the building first.
We were sitting there not paying much attention to him. I
was sitting there on a horse. He walks up and begins talk-
ing to me. I don't remember the exact words that he used
now. Anyway he said it was their job and they was taking
the job over. He asked us if we would like to join up with
them and work with them.

By Mr. Robertson:

Q. What was your answer to that?

A. I didn't answer it because I was nothing more than
steward on the job at that time and our business agent by
that time had walked into the building and he taken over. I
didn't say anything else.

Q. Were you the steward on the job there then?

A. That is right.

Q. When this conversation occurred between Hart and Mr.
Bert Preston, the business agent, about how many men do
you think were there in the toolhouse?

A. It wasn't a very large building. There weren't but
about 12 or 20 foot. It was full. I would say 25.

Q. What was the conversation between Hart and Preston
and Arnett, if Arnett came into it?

A. When Hart said he was taking over the job, I don't
know how it was, but anyway several—

The Court: Talk louder, Mr. Patrick.
page 955 } The Witness: There were some pretty harsh
words passed there, and there was a disturbance
there, a racket about to start. That is when Bert Preston
gets into it. Hart says he would take over. He could go and
bring 600 men out of Beaver Creek and take the job over.

By Mr. Robertson:

Q. Was there any cussing going on?

A. There was.

Q. What words did you hear pass?

A. He said they could kick our damned ass off the job.

Q. Did Arnett take any exception to anything that Hart
said?

A. Yes, sir; he did.

Q. What did Arnett have to say about it?

Jack Patrick.

A. I just can't quote exactly what the man said. I have forgotten.

Q. What is the upshot of it?

A. That is when everybody was getting loud and rough. Some fellows on the outside of the building, all rushed the building, crowded the door. Even the outside and all, they were jammed full in there.

Q. Were any of them crowded up around the windows and doors?

A. They was.

Q. Did any of the men go back to work after page 956 } lunch that day?

A. You mean the A. F. of L. men?

Q. Yes, sir.

A. No, sir.

Q. Did you go back?

A. I did not.

Q. Why?

A. Well,—

Colonel Harris: On each one of these "why" questions may we have an objection throughout the rest of the case to save time. It calls for an uncommunicated mental operation and invades the province of the jury.

The Court: You may save the point.

By Mr. Robertson:

Q. Why didn't you go back to work that afternoon?

A. The fact of the matter, they threw a picket line on it in the first place and in the second place if they hadn't, I wouldn't have gone back. They threw a picket on it and if they hadn't thrown a picket on it I wouldn't have gone back.

Q. Why?

A. There are too many fellows there talking too big for me.

Q. Were you scared to go back?

A. It didn't suit me to go back, no, sir, I didn't.

Q. Did you go to the union meeting in Paints-
page 957 } ville that night?

A. I did.

Q. We have been over that pretty thoroughly. I don't think we need go into all that again.

Did you meet with others at Salyersville the next day, Wednesday, to go back out to the job?

A. I did.

Jack Patrick.

Q. Did you go together or go separately?

A. We all went pretty much together.

Q. Why?

A. Well, so if anything started we would all be together on it. We went more or less in a group so we would all be together.

Q. When you got out to the job site did you go down toward the tipple?

A. I did.

Q. Did you see anybody down there at that time?

A. I believe there was one fellow.

Q. Did you have any talk with him?

A. I did not.

Q. Then during the course of the morning on Wednesday did you as the steward have any talk with the men there in the toolhouse or in any of the buildings there at the job site?

A. I called a bunch of men off from work.

page 958 } Q. About what time was that?

A. I would say that was an hour, possibly an hour and a half after they started to work.

Q. Why did you pull them off the work?

A. Unsafe.

Q. Had any reports come to you that anything was going to happen in particular about running them off the job that day?

A. Nothing—one fellow who worked on the tipple all the time was a United Mine Workers, an electrician. I went up on the tipple and he came up to me and said, "Jack, what are you doing, putting these men back to work?" He said, "Don't you know we are with these boys, too?" Then I called them all off the tipple.

Q. What is the reputation of the United Mine Workers there in Kentucky for pulling rough stuff and running people off the jobs?

Colonel Harris: We object to that question, if the Court please. It is highly prejudicial and improper. It is no way to charge responsibility in a claim of this sort.

Mr. Robertson: It goes right to the heart of the case. They have intimidated they quit work because they wanted to honor the picket line.

page 958-A } The Court: Are you going to ask him about any particular event?

Mr. Robertson: Yes.

The Court: I will allow the question.

Colonel Harris: We reserve an exception.

Jack Patrick.

By Mr. Robertson:

Q. What is the reputation of the United Construction Workers about being rough or gentle in running people off jobs in eastern Kentucky?

Colonel Harris: Same objection and exception.

The Court: Same ruling.

The Witness: They just walk in on a job and demand it and take it over. They are bad that way.

By Mr. Robertson:

Q. Do you know of any instances where they have done that?

A. I do.

Colonel Harris: Same exception and objection.

By Mr. Robertson:

Q. Can you name some of them?

Colonel Harris: May I have an objection and exception to all the questions on this line to save repeating?

The Court: You may save your point.

By Mr. Robertson:

Q. Will you name as many as you can, any of them that you can, where you have known them to run men off page 958-B { the job in the same way that they ran A. F. of L. men off the Laburnum job?

A. There was a job going on at Beaver Creek, a tipple. They took it all over and put them off the job. They had a lot of trouble there. The same way in Prestonsburg, a construction job, non-union outfits. They put them off. They came along and taken our job from us. I believe that is all that I recall at the present time.

Q. Did you know about that when you called your men off the Laburnum job?

A. Part of it.

Q. Was that one of the reasons you called them off?

A. I knew what had been in the past, yes, sir.

Q. Did you notice any drinking among Hart's men there on Tuesday?

A. I didn't see anybody drinking, no, sir.

Q. Have you ever seen Hart since that Tuesday that he was there?

Jack Patrick.

A. I have.

Q. When and where?

A. In front of the Howard Hotel, the following day.

Q. Is that in Paintsville?

A. That is right.

Q. Did you have any conversation with him there?

A. I did.

Q. What was that conversation?

page 959 } A. He was sorry, that he didn't mean to take
the job in that way and put us fellows all out of
work. All he wanted was us to sign up with him and go to
work for him, that they were in need of carpenters. He wanted
us to go back to work.

Q. Did he say you could go back to work over there with-
out signing up with him?

A. No, sir.

Q. Did he still say you would have to sign up?

A. That is right.

Q. What did he say you would do if you went to work with-
out signing up?

A. It wasn't mentioned.

Mr. Robertson: The witness is with you.

CROSS EXAMINATION.

By Colonel Harris:

Q. Do you know John Arnett?

A. I do.

Q. How long have you *known* him?

A. On this one job over there.

Q. The rough talk started in the toolhouse when John Ar-
nett told Hart, "You are a damned liar," didn't it?

A. I couldn't answer that. I don't know. I don't remem-
ber that.

Q. You don't remember that?

page 960 } A. No, sir.

Q. You do know that your business agent, Bert
Preston, touched John Arnett on the shoulder and said in
substance, "You shut up. I will take charge." You remem-
ber that, don't you?

A. I don't remember that.

Q. Were you in the toolhouse?

A. I was in the toolhouse, yes, sir.

Q. And it is just 12 by 20 feet.

Jack Patrick.

A. I would say that, yes, sir.

Q. And you didn't hear anything that Bert Preston said?

A. Yes, I did.

Q. Said to John Arnett?

A. I don't remember it in that way. Bert Preston was over next to this door and John Arnett was over here, the way I remember it now.

Q. They weren't where he could touch John Arnett?

A. That is the way I recall it.

Q. Then did you hear in there Mr. Preston, your business agent for your local, tell Mr. Hart if they would set up a picket line your union would honor it?

A. He did.

Q. You heard that, didn't you?

A. He did.

page 961 } Q. Did you hear Bert Preston say, "A man standing out there isn't enough. You must put up a sign." You heard him say that, didn't you?

A. Hart said he would put up a sign out there. Preston said he wouldn't accept anything like that. That it had to be a legal picket. Hart said he would do it. Preston said, "If you do it that way we would have to honor your picket."

Q. He used the phrase, then, in that conversation, that it would have to be a legal picket?

A. He did.

Q. Are you positive about that?

A. I am swearing it.

Q. Have you talked to anybody about what happened in that toolhouse in the last six months?

A. Yes, sir.

Q. Who have you talked to about it?

A. Practically all of us have talked it. We talked it among us and discussed the whole thing.

Q. Practically all of you?

A. Yes, sir.

Q. How many times have you all discussed in a meeting of your local union what happened out there on that occasion?

A. I wouldn't state the exact number of times.

Q. In your best judgment. Does it come up
page 962 } every meeting night?

A. It does not.

Q. How often does the union meet?

A. At that time we were having two meetings a month.

Q. You couldn't give us any idea of the number of occa-

Jack Patrick.

sions on which you all as members of 646 have discussed this case since it happened?

A. No, sir; I wouldn't.

Mr. Robertson: Wait a minute. Have you finished your answer?

The Witness: No, I didn't.

By Mr. Harris:

Q. Go ahead and finish.

A. Sometimes it would be talked two or three meetings straight.

The Court: How many? I didn't catch that.

The Witness: Maybe two or three meetings straight we discussed it to some extent. Maybe we would go another two or three meetings and it wouldn't be mentioned. For that reason I just wouldn't state the exact times it was discussed.

By Colonel Harris:

Q. Did the union, your local union, or your international union take any action on having you men of the A. F. of L. union come over here to be witnesses in this case?
page 963 } A. No, sir.

Q. The international union didn't have anything to do with it?

A. I never heard a word from the international union.

Q. And your local union?

A. No.

Q. Did you all agree in these discussions in the local union about this case that you would come over here and testify?

A. I never heard that.

Q. How long have you known that you were coming over here to testify in this case?

A. This past Thursday.

Q. Who gave you the word to come?

A. My father.

Q. Is he a member of the union?

A. That is right.

Q. Was your father out there that day?

A. Out where?

Q. At the job site of Laburnum Construction Company on July 26, 1949. Was he working there then?

A. He was working on the job. I don't know whether he was on the work that particular day or not. I just don't recall that.

Jack Patrick.

Q. Who was it that told Hart, "You pulled a page 964 } picket on us"? You used that phrase on your direct examination. You pulled a picket. Who was it who told Hart that?

A. That he pulled a picket?

Q. Yes. I understood you to use that expression on your direct examination.

A. Preston told him it had to be a legal picket before he would not cross it.

Q. You don't recall using the phrase "You pulled a picket," in the last half hour?

A. Preston told him if he put a legal picket up there he would have to honor it.

Q. You have told us that. My question was about the phrase "pulled a picket" that I understood you to use on your direct examination.

A. I don't know what you mean by pulled.

Q. All right, I didn't either. That is why I was asking.

In this conversation with Hart he said there had been a misunderstanding, that what he wanted to organize was laborers, didn't he?

A. I never heard that.

Q. When he was out there that day, did they ask you to join the United Construction Workers?

A. He did.

Q. Did he ask the other carpenters to join the page 965 } United Construction Workers?

A. I would say half the fellows on the work were in the toolshed having lunch when he walked in and told us we could join up with him. It was their job and they were going to take it.

Q. You didn't hear him ask any of the laborers to join, did you?

A. As a matter of fact, I don't think there were any laborers in this business at the particular time.

Q. During the time they were out there you didn't hear him ask any carpenters' helpers to join, did you?

A. There were no carpenters' helpers on the job.

Q. So all that you saw out there was them asking carpenters to join, is that right?

A. That is right.

page 966 }

C. H. PATRICK

a witness called for the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Patrick, your name is C. H. Patrick?

A. That is right.

Q. Are you the father of Mr. Jack Patrick, who just testified?

A. I'm the father of Jack Patrick. I think I am following him. As far as I know I am.

Q. How old are you, Mr. Patrick.

A. I am 68.

Q. Where do you live?

A. Paintsville, Johnson County, Kentucky.

Q. Are you a member of any union?

A. American Federation of Labor.

Q. What is your local?

A. 646, Paintsville.

Q. What kind of work do you do?

A. Carpenter.

page 967 } Q. Were you working for Laburnum Construction Corporation in July, 1949?

A. I was.

Q. I call your attention now to the week beginning Monday, July 25. Before that time as a member of your union did you get a report that the United Construction Workers were coming to the Laburnum job in Breathitt County and run you all off?

A. Yes.

Q. What was the report that you got about that?

A. The report we got was that they were coming in and running us out. They claimed it was their work and they were going to have it.

Q. Where were you born and raised?

A. Johnson County, Kentucky.

Q. Is that the adjoining county to Breathitt?

A. No, sir. Magoffin County is the county in between the two.

Q. Do you know Floyd, Johnson, Magoffin, and Breathitt Counties?

A. Quite well.

Q. What is their reputation for law abiding or law breaking?

C. H. Patrick.

A. Well, our local newspapers get a nation-wide reputation as being bad. In some cases I think they erred; page 968 } in others maybe not, but at any rate the reputation is not good.

Q. Were you working out there at the Laburnum job site on Monday, July 25, 1949?

A. I was.

Q. Were you working up at the head house or down at the tippie?

A. I was up on top of the hill at the head house, I assume you call it.

Q. Were you expecting the United Construction Workers there that day?

A. Any minute.

Q. Did they come that Monday?

A. Not to where I was.

Q. Did you do a normal day's work on that Monday?

A. No, I did not.

Q. What were you doing?

A. Keeping my eyes open for something, these visitors we expected.

Q. What is that?

A. Keeping my eyes open for the visitors that we was expecting.

Q. Did you see any? Were you scared?

A. Well, no, I won't say I was scared but I didn't feel safe.

page 969 } Q. On Tuesday, July 26, were you working up on the hill or down at the tippie?

A. The dates now are a little indistinct in my mind. I wouldn't say positively about the date. The way I recall it, the next day we didn't anyone work.

Q. You recall the occasion when Hart and the group of men first came to the job site?

A. Yes, sir; very distinctly. I was notified over the telephone, from the bottom of the hill up to the top, what was taking place.

Q. Did you go down?

A. I did not.

Q. Why?

A. I had my own personal interests to look after.

Q. Did you go down there at any time during the progress of the trouble or did you stay up on top of the hill?

A. I stayed on top.

C. H. Patrick.

Q. When you left work did you go down to see what was going on?

A. I did not. There was a different route entirely to the highway that I made to go to the top of the hill from what the other fellows went to the tippie. I came around the top of the hill, to the intersection back here to come off, and I didn't go down to the tippie site at all.

Q. Did you take a different route home than the page 970 { one you generally take, or use the same way you generally go?

A. I took the same route home that I usually take, although it was a little different that evening, because this trouble came up and the fellow I was riding with went on, and left me stranded. So I waited there by the side of the road for a little while until someone picked me up.

Q. Did you go back to the job site the next day?

A. To the company office, only.

Q. What happened when you got back there the next day?

A. There were quite a few strangers to me, just milling around from one point to another. Nothing particular took place. Mr. Bryan there tried to get us to go back to work, and we absolutely refused. He walked down the slope toward the creek and also toward the tippie. Just below the road there was a little picket sign stuck up there on a little stick. He went down and plucked it out of the ground and threw it over the hill.

He came back up and said, "Come on; now you don't have to cross a picket line to go to work."

At that particular time, as well as all others, these carpenters were represented by a spokesman, which was our steward. He told Mr. Bryan that we absolutely refused to go over there to work.

page 971 { Q. Were you present when any conversation among the men occurred there in the tool house?

A. I was not.

Q. On that day?

A. I was not.

Q. Did you ever have any conversation with Hart after that?

A. I did.

Q. When was that?

A. Possibly the next day after all this happening in Breathitt County. This took place in Paintsville, Kentucky, in Johnson County.

C. H. Patrick.

Q. Where did you see Hart?

A. I saw him on the streets in Paintsville; also in our Local office.

Q. When you first saw him, what was the conversation between you and Hart, or any conversation you heard between Hart and anybody?

A. When I first saw him, I didn't get any part of the conversation. He was talking on the street to some of the other fellows. I didn't get any part of the conversation until we met him in our headquarters, local headquarters.

Q. Union Hall?

A. That is right.

Q. What happened there?

page 972 } A. He tried to apologize. He said that it wasn't his intention to take our job. Quite a little conversation took place.

We finally had him to admit that he was only wanting us to go back to work under his contract, sign up with him and go back to work.

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Q. State whether or not Hart said anything would or would not happen to you if you tried to go back there and work without joining up with the United Construction Workers?

A. He said we could not go.

Q. What is the reputation of the United Construction Workers in Eastern Kentucky about running people off the work, A. F. of L. men?

page 973 } Colonel Harris: The same objection we assigned to the same question as to the United Mine Workers.

The Court: The same ruling.

Colonel Harris: We note an exception.

By Mr. Robertson:

Q. What is their reputation?

A. Not good.

Q. Do you know of your own knowledge of any other jobs that they have run people off of, like they did the Laburnum A. F. of L. men off the Laburnum job?

A. I do.

Q. Will you name some of them?

C. H. Patrick.

A. Oil Springs school job in Johnson County, Kentucky.

Q. Any others?

A. The name of the firms I can't state. Two or three on Beaver Creek, but I wouldn't say the firms.

Q. On Beaver Creek?

A. Yes, sir, Floyd County.

Q. Any others?

A. I don't know of any others.

Q. Did you know about their general reputation for running people off when you advised the men not to go back to work for Laburnum?

A. I beg pardon; I didn't get that.

Q. I don't think it was a proper question. Strike page 974 } it, please.

Did you know the general reputation of the United Construction Workers in Eastern Kentucky at the time this trouble occurred there on the Laburnum job?

Colonel Harris: Same objection, and exception.

The Court: Same ruling.

The Witness: I did.

Mr. Robertson: The witness is with you.

CROSS EXAMINATION.

By Colonel Harris:

Q. Mr. Patrick, are you an active member of 646?

A. I am.

Q. Have you been attending the meetings fairly regularly for the past year and a half?

A. The past 8 years.

Q. The past 8 years?

A. Yes, sir.

Q. At one time you were an officer in the Local, weren't you?

A. Never; no, sir.

Q. You have never been an officer?

A. No, sir.

Q. Practically every time you all have a meeting, there is a discussion of what happened over there at the Laburnum job site, isn't there?

page 975 } A. Along at the time this was taking place, yes, sir.

C. H. Patrick.

Q. I mean since.

A. Since? No, sir.

Q. In these regular meetings that you have attended for the past 6 months, have you heard any discussion at the meeting of what happened over at the Laburnum job site?

A. I have not.

Q. You have not.

Now, Mr. Patrick, on this occasion, you were up at the head house, weren't you?

A. I was.

Q. Mr. Hart didn't come up to the head house, did he?

A. He did not, that I know of.

Q. You didn't see him at the head house, did you?

A. I did not.

Q. You didn't have any conversation with him up at the head house?

A. I did not.

Q. None of the men with him came up to the head house, did they?

A. If they did, I don't know it.

Q. You were wide awake. You weren't taking a nap that day at that time?

A. I wasn't taking a nap, but there were plenty of places they could come up there and me not see them.

page 976 } Q. You didn't hear any of them in any conversation with anybody on July 26, did you?

A. I won't answer that question, for the simple reason that I don't recall the dates very distinctly.

Q. I will try to help you out. I am talking about the day that it is alleged that Hart and some 35 or 40 or 50 or 75 men came up to the Laburnum job site, along in July.

A. No, sir, I didn't talk to him at all that day.

Q. You didn't talk to any of the other men that were with Hart?

A. No, none of Hart's representatives.

Q. And nobody in Hart's group made any threats to you on that occasion, did they?

A. They did not.

Q. Nobody in Hart's group injured you on that occasion?

A. They did not.

Q. Everything that you have been testifying about, that happened on that occasion, is just what you have heard other people say?

A. No.

C. H. Patrick.

Mr. Robertson: Let him finish. Wait a minute.

The Witness: What I have been testifying, in two or three instances I told you we had a conversation with Mr. Hart in the office—

page 977 } By Colonel Harris:

Q. I am not talking about a conversation in the office. I am talking about what happened out at the job site.

A. O. K. Then repeat your question, will you, please?

Colonel Harris: Read it to him, please, Mr. Dudley.

(The question was read by the reporter.)

The Witness: At that particular time, yes.

Colonel Harris: If the Court please, in view of the positive admission of the witness that all his testimony as to what happened on that occasion was hearsay, we move the Court to exclude that testimony and to direct the jury to disregard it.

Mr. Robertson: If Your Honor please, it is what came to this man as a union member, as reports of what was happening to other union members and what was going to happen to him if he didn't watch out. It is relevant for those reasons.

The Court: The motion is overruled.

Colonel Harris: We reserve an exception.

By Colonel Harris:

Q. You have testified about the United Construction Workers running somebody off the job at Oil Springs, off the Oil Springs school job, is that right? Did I get the name right?

A. That is right, yes, sir.

page 978 } Q. Were you working on the Oil Springs school job?

A. No, I was not.

Q. Were you present on the Oil Springs school job?

A. I was.

Q. Were you there at the time that the United Construction Workers came and ran them off?

A. I was not.

Q. Everything you have testified about the United Construction Workers running them off the Oil Springs school job was what you had heard somebody else say afterwards, wasn't it?

A. I wouldn't say that. We had been in conference with

C. H. Patrick.

the officials of the construction company, and I wouldn't exactly answer your question that way.

Q. You mean the construction company that was putting it up?

A. That is right.

Q. But you had not been in conference with any member of the United Construction Workers on the job, had you?

A. No, I had not.

Q. What you have testified is what another group, the contractor, told you, is that right, the construction contractor? When you say they ran them off the Oil Springs school job, you are repeating information that you got from the contractor?

page 979 } A. Did I say that they ran us off that job?

Q. I thought you did. What did you say?

A. I didn't say that.

Q. Do you remember mentioning the Oil Springs school job here this afternoon?

A. I do.

Q. What did you tell us about it? I didn't hear you right, maybe.

A. I answered your question, but what it was, I don't recall.

Q. It wasn't my question. It was a question of Mr. Robertson's.

A. Whoever's question it was, I don't recall it.

Q. You don't recall what you said about the Oil Springs school job.

You also said the United Construction Workers had run you off of two or three jobs on Beaver Creek?

A. I did not make that statement.

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page 980 }

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Q. When I said "ran you," I didn't mean you personally. I meant A. F. of L. unions.

Now, what was it that you said before about A. F. of L. unions being run off Beaver Creek?

A. I didn't mention it.

Q. You didn't mention A. F. of L. unions, but you said somebody was run off the job on Beaver Creek, didn't you?

Chester Trimble.

A. I don't recall that I said anything about Beaver Creek.

Q. You don't recall mentioning Beaver Creek within the last 15 minutes on examination by Mr. Robertson, is that right?

A. No.

page 981 } Colonel Harris: I believe that is all.

RE-DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Patrick, when you were up on the top of the hill there, the day that Hart and his men came to the tipple, could you look over the edge of the work and look down there and see them?

A. I could very plainly, and watched very plainly.

Q. Did you ever go back to work after that over there?

A. I did not.

Q. Why?

A. I didn't feel it was safe.

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page 982 }

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CHESTER TRIMBLE,

called as a witness on behalf of Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Trimble, your name is Chester Trimble?

A. Yes, sir.

Q. Where do you live?

A. Barnett's Creek, Kentucky.

Q. How far is that from Paintsville?

A. Seven miles.

The Court: Mr. Trimble, talk loud so these gentlemen over here can hear you. Try to talk just about as loud as I am talking now.

Chester Trimble.

By Mr. Robertson:

Q. How far is your home on Barnett's Creek from the Laburnum Construction Corporation job site in Breathitt County, Kentucky?

A. Somewhere around 38 miles.

Q. How old are you?

A. Twenty-four.

Q. What kind of work do you do?

A. Carpenters work.

Q. Where are you working now?

page 983 } A. At Oxford, Ohio.

Q. Are you a member of any union?

A. Local 646, A. F. of L., Paintsville, Kentucky.

Q. In July, 1949, were you working for Laburnum Construction Corporation?

A. I was.

Q. Breathitt County.

I call your attention now to the week which began July 25, 1949. Before that Monday, had you got word, as a member of your union, that the United Construction Workers were coming to run you off the job?

A. I heard rumors of it.

Q. Were you working at the job site on Monday, July 25?

A. I was.

Q. In what part of it were you working?

A. I was working on the third floor.

The Court: Working where?

The Witness: Third floor.

By Mr. Robertson:

Q. Of the tipple?

A. Of the tipple.

Q. How high is that off the ground?

A. I guess it was around 50, maybe 60 feet.

Q. Did anything happen there to stop your work that Monday?

page 984 } A. No, sir.

Q. Then did you go back to work there the next day, Tuesday?

A. I did.

Q. Were you still working up on the third floor of the tipple?

A. Yes, sir.

Chester Trimble.

Q. Was the tipple running?

A. Yes, it was.

Q. Would the coal come in higher up than where you were working, or even with you, or lower than you?

A. It came in on the side of the tipple down the hill, on the bucket line.

Q. What was the first thing unusual, if anything, that happened there that Tuesday when you were working there on the tipple?

A. Nothing happened while I was working on the tipple. It was while we were eating dinner.

Q. What happened then?

A. I was sitting in the tool shack eating dinner, and I didn't hear anybody say anything about anybody coming. I looked up and the door was crammed full. They were crowding in pretty fast.

Q. Then what happened?

A. Mr. Hart came in, and he talked to Jack
page 985 } Patrick. He said he had come over there to take
the job over. Jack didn't say too much to him.
He told him that Bert Preston was our Business Agent, and he
was over there.

The Court: Don't talk quite so fast, Mr. Trimble.

The Witness: He told him to see Bert Preston; that he was representing us as our Business Agent, and to do his talking to him.

Bert came in there then, and Bert asked him what right he had to do that. He said he had the laborers signed up. Bert said, "That doesn't have anything to do with us, then," and asked him to see some of the cards.

He wouldn't show him none of the cards where he had them signed up. Bert asked, "Have they took their obligation?" And he said, "No."

He also went ahead to say that, by God, we were doing their work, and they were going to have it.

Bert said, "Well, we can't do that. We have got a contract." He said, "We have got to stand up with it."

He said, "You ain't going to work unless you sign up."

Bert said, "What are you going to do to keep us from working?"

He said, "I am going to stop the job."

Bert said, "How?"

He said, "I will put up a picket line."

Chester Trimble.

Bert said, "A picket line, according to law, we page 986 } can't cross it."

He said, "I will send a man over there at the foot of the stairs."

Bert said, "By God, we will go by him. He doesn't mean nothing standing there."

So he wrote out a picket sign and took it over there and hung it up. Bill Haslam made him take it down. He went ahead to say that he would take it over to the road and they didn't want to have to come back the next day and walk it.

Bert said, "We will work, sure as hell."

He said, "You go to work, and within two hours I will have 300 men from Beaver Creek, and we will kick your ass out of the holler."

By Mr. Robertson:

Q. During that episode there in the tool house, did you hear any conversation between Hart and a man named Arnett?

A. Yes, I did. John Arnett was in there, and he said, "Hart, you told these boys a god damned lie. You can't back up a god damned word of what you said."

Bert got hold of John and said, "John, I will do the talking. That is my job."

Me and my father, we went over and put our page 987 } arm around John and sort of got things quieted down. It looked like there might be trouble start any time. The boys were moving around a little bit and pulling there shirts for some reason or another, putting their hands in their pockets, and this, that, and the other. It don't look too damned healthy for a while.

Q. You weren't scared, were you?

A. I don't know whether I would be scared or not, but I like to live, the same as anybody else.

Q. Did you go back to work any more that day?

A. No, sir.

Q. Why?

A. By God, they said not to. They said to be damned sure we didn't.

Q. Were you scared to go back to work?

A. Well, to be honest, sir, yes, I was. I mean, I wanted to live, as I said before.

Q. Did you go to the union meeting that night at Paintsville?

A. Yes, sir.

Q. We have been all over that, so I won't go over that again.

Chester Trimble.

Did you go back out to the job Wednesday morning, the 27th?

A. Yes, sir, I did.

page 988 } Q. Did you meet with the other people and go, or go by yourself?

A. No, we all got together in Salyersville, a filling station over there.

Q. What did you do that for?

A. We figured it would give us a little better chance. The roads in there are out in the woods. They had just been built. We figured that in case of any trouble, it might give us a little bit more chance.

Q. When you got over to the job site, where did you go?

A. I stopped over at the office.

Q. What happened there?

A. There was a picket sign standing down there where they said it would, and said not to cross it. I didn't cross it. I stayed on this side of it.

Mr. Bryan, he went down and picked it up, and what he did with it, I don't know. I think he threw it over the hill, to the best of my memory.

He walked on over and was wanting us to go on to work. He was persuading pretty hard like. We tried to tell him he didn't know what he was talking about; that he was from Richmond and we were from down there, and we knew how them fellows done things down there.

Some of the boys went on over to the job with him, to the tool shack. I stood around a while and then
page 989 } moseyed on over, too. We were all in the shack there, and he kept on wanting us to go to work, and begging us to go to work. He said if that was up in Richmond, they would run them damned fellows off there. They wouldn't come off their work at all for them.

I know personally I told Mr. Bryan "this ain't in Richmond. This is in Breathitt County, and these fellows down here don't run very damned good. There is a hell of a lot more of them than there are of us."

The Court: Did you hear that?

The Witness: I said, personally I told Mr. Bryan—you heard the part I told him, he was from Richmond. He said, "If it was in Richmond, the local up here would pay no attention to that." I said, "Mr. Bryan, this ain't in Richmond. This is in Breathitt County, and they have got us outnumbered a great deal." I said, "We can't even think about going back to work."

Chester Trimble.

By Mr. Robertson:

Q. Did you hear Jack Patrick ever say anything there that day about whether you would go back to work or not?

A. Yes. He was the steward on the job. He told Mr. Bryan it looked too dangerous for him, and as the steward he wouldn't insist and didn't want none of the men to go back to work for fear some of them would be hurt.

Q. Were you scared to go back to work?

page 990 } A. I didn't go back to work, sir.

Q. Why?

A. I guess you would say I was scared.

Q. Have you ever been back to work over there since then?

A. No, sir, I never have.

Q. Why?

A. After they lost their contract, and they took the job over, I just never did go back, sir.

Q. What is the reputation, if you know, of the United Construction Workers about running people off jobs in Eastern Kentucky, A. F. of L. men?

Colonel Harris: Same objection, and exception, to this line of questioning.

The Court: The same ruling.

The Witness: The A. F. of L. men?

By Mr. Robertson:

Q. Yes.

A. It has been pretty hard. I know of two jobs they took them from the A. F. of L.

Q. What two jobs were those?

A. That was the United Steel coal tippie at Lynch, Kentucky, and I think it was the Greenbrier Company over where they built the Dewey Dam. They were moving a graveyard over there, and they took a job over there.

page 991 } Q. Did you ever see Hart any after that date?

A. Yes, I saw him in Prestonsburg once after that.

Q. Did you have any talk with him?

A. I talked a few words with him. I went up there to look at a truck?

Q. What did he have to say then?

A. Oh, he was sort of talking about that job over there. He said we should have went in with him. He went far enough to say, "You boys used your heads when you didn't

Chester Trimble.

go to work over there that morning, because," he said, "I had men spotted all around that tipple." He said, "I had a bunch below it and a bunch above it.

Mr. Robertson: The witness is with you.

CROSS EXAMINATION.

By Colonel Harris:

Q. Where did you say you were born?

A. Paintsville, Kentucky.

Q. Were you raised out there in Paintsville, Kentucky?

A. I was raised partly in Paintsville and most of the time in Barnett's Creek. After I was about 6 years old, I was raised in Barnett's Creek.

Q. Have you spent all your life, practically, in Kentucky, up until the time of this Laburnum job?

A. The bigger part of it, sir.

Q. And you tell the jury that you, a Kentuckian, born and raised out there, were scared?

A. Sir, when a man damn right tells you not to do something, you better not do it.

Q. Was there anybody hurt out there on that occasion?

A. You mean on the job?

Q. Yes.

A. No, sir; as I know of, there was no one hurt.

Q. Was anybody hit?

A. As I know of, there was no one hit,—

Mr. Robertson: Let him finish.

Go ahead.

The Witness: —but they would have been.

Colonel Harris: Will Your Honor exclude that statement? I asked him if anybody was hit, and he said, "No, but they would have been."

The Witness: I said they could have been.

The Court: Let him finish his statement, and then make your motion.

Colonel Harris: Had you finished?

The Witness: I said there could have been; it would have went far enough to call their hand and done what they ordered us not to.

Chester Trimble.

Colonel Harris: We move to exclude that statement.

Mr. Robertson: I think it is relevant, Your Honor, to show whether they were just making out like they were page 993 { scared when they weren't, or whether they were actually afraid to go in there. They have made it very obvious that they are going to claim they weren't scared, but they didn't want to cross the picket line.

The Court: The Court will allow it for what it is worth.

Colonel Harris: We reserve an exception.

By Colonel Harris:

Q. In your judgment, there were about 150 of these men, weren't there?

A. There was a pretty good bunch of us.

Q. My question was: In your judgment, there were about 150 of these men?

A. I didn't count them, sir, but there still was a pretty good bunch of them.

Q. Will you tell me what your judgment was as to whether there was 150 of them?

A. There was a way up towards 100—there was, I would say roughly, just looking the crowd over, that there was in the number of 150.

Q. Did this 150 men divide up after you saw them, or did the 150 stick together?

A. What do you mean, sir? When they left the job, or—

Q. No, as between the schoolhouse and the tippie and the office.

page 994 { A. When they came there, I was in the tool shack eating dinner, and they were all out there when I walked out of the toolhouse after the talking had done been done. They were scattered around there.

Q. Did you see a group of them go into the toolhouse?

A. I was in there when they came in there, sir.

Q. Did you stay in there, or did you leave?

A. I stayed in there until well after he started to put up the picket line. When all the talking was done and he started to put up the picket line, I came on out.

Q. John Arnett started the rough talk in the toolhouse, didn't he?

A. That is right.

Q. He called Mr. Hart—he said, "You are just a God damned liar," didn't he?

A. He sure did, sir.

Chester Trimble.

Q. Is that fighting talk out in Kentucky?

A. Well, it could be,—

Mr. Robertson: Let him finish. Wait a minute.

The Witness: —but he didn't say that until after Hart said we were doing their God damned work and they were going to have it. That is pretty hard talk, too.

By Colonel Harris:

Q. Did anybody, either Mr. Hart himself or any of these men who were with him, offer to hit Arnett, to
page 995 } mistreat him physically in any way, when he used that language to Mr. Hart?

A. There wasn't none of them hit him, sir, but there were several of them went in their pockets and were fumbling around their shirts, and Bert got him quieted down, I think, myself, just in time.

Q. You think Arnett would have brought on some sort of trouble if your Business Agent hadn't stopped him?

A. I don't think Arnett would. I think the United Construction men would.

Q. They didn't do anything, did they?

A. No, they didn't do anything, but I think they were in the notions of doing something.

Q. You think that with 15 or 20 men there in the toolhouse, the mere fact that Mr. Preston touches one of the A. F. of L. men on the arm and says, "Let me do the talking," you think that kept any trouble down right there?

A. Well, it kept trouble down, yes. I think if John Arnett had went ahead and talked too much, it would have started. He got stopped so quick that they didn't hardly get their morale up in time, that is all.

Q. But there wasn't any doubt in his saying what he did loud enough for everybody in that toolhouse to hear, was there?

A. There was a lot of noise going on in there,
page 996 } sir. Everybody was talking like they usually do, and I know a number of them heard it.

Q. What was said about a picket sign or a picket line there in the toolhouse?

A. The only thing—he told him the only thing we would possibly recognize would be a legal picket line, according to the laws of the Brotherhood.

Q. He used the word "legal," and "according to the laws of the Brotherhood"?

Chester Trimble.

A. The law of the picket line, that is.

Q. You said just a minute ago—

A. Not just a man standing up there, but one stuck in the ground.

Q. You said a moment ago that he said "one that was legal according to the laws of the union," didn't you?

A. Of the union, all unions, that is right.

Q. You heard Bert Preston say that in the toolhouse?

A. In words to that effect, I sure did. I don't know whether he worded it just like that, but he meant that would be the only possible way that we could quit.

Colonel Harris: We move to exclude the statement, "but he meant that would be the only possible way we could," as not responsive to my question.

Mr. Robertson: I think it is responsive.

The Court: I will grant the motion. The page 997 } motion is sustained.

Gentlemen, disregard that last statement of the witness.

By Colonel Harris:

Q. Are you still a member of the union?

A. 646?

Q. Yes.

A. Yes, sir.

Q. How long has it been since you went to a union meeting down there?

A. It has been the first of this month. We just have a meeting once a month.

Q. I thought you were living somewhere out in Ohio.

A. My home is down there, sir. I come back every other week end. It is only a little bit over 200 miles.

Q. How many meetings have you attended down there, of Local 646 in Paintsville, during the past 12 months?

A. I guess I have attended the most of them.

Q. How many would be?

A. That would be 12. We have one each month.

Q. At how many of those meetings have you A. F. of L. members discussed what happened over at the Laburnum Construction Company's job site?

A. I couldn't tell you just the number of them, sir. It has been talked in one or two meetings, and maybe it page 998 } would miss one or two, and then maybe be brought up again. Just how many times it was ever named in the hall, I couldn't tell you.

Chester Trimble.

Q. But that has been one of the chief topics of discussion in your union for over a year, hasn't it?

A. No, sir, not altogether.

Mr. Robertson: Let him finish, please. He hadn't finished.

The Witness: It often has been brought up in the hall, but it never went into great discussion or anything like that.

page 999 } By Colonel Harris:

Q. Will you name some subject outside of the regular routine matters that have to come up in a union meeting, will you name some other subject—

A. You mean that has to come up in some or does come up in ours?

Q. Your union has a regular system of transacting its business?

A. That is right. You see, we have—go ahead and ask your question.

Q. I am not talking about the regular system where you start at the top and come down with your program, but will you name any other subject that has been talked as much in your union during the past 12 months—

A. As that has?

Q. Yes.

A. We have a very small union, sir, and we don't have a great deal of business. That is the reason we have only one meeting a month. About the only thing that we discuss in our union—we don't have too many jobs down there, in fact we haven't got a contract now. We have the regular routine that you go through and new members, if there are any, and paying the bills, and if anybody knows of anyone's getting work, and that is about all we have at the union meetings. We don't

have too many carpenters and we don't have any
page 1000 } contracts at the present.

Q. My question was, do you know of any subject that has been discussed as much in those union meetings as this—

A. Yes, sir, either of them I named has been talked as much as that, because that hasn't been talked a great deal in the past year.

Q. Did you hear Mr. Hart on this occasion on the 26th of July say anything about carpenter helpers and laborers?

A. You mean them having them signed up?

Q. Yes.

Chester Trimble.

A. He said he had them signed up, yes, sir.

Q. You heard that yourself?

A. I heard that he said it.

Q. Was that said in the toolhouse?

A. That was said in the toolhouse. Our business agent asked him to see the cards and he wouldn't show them to him and he asked if they had taken the obligation and he said no, sir, they hadn't taken the obligation yet.

Mr. Robertson: Let him finish, please, Mr. Harris.

The Witness: That is all I had to say.

By Colonel Harris:

Q. Had you really finished that time?

A. Yes, sir.

Q. All right. That was close enough to where there was no chance for you to misunderstand what was said?
page 1001 } A. That is right.

Colonel Harris: That is all.

RE-DIRECT EXAMINATION.

By Mr. Robertson:

Q. When Hart and his men came there on July 26 did they have the A. F. of L. men outnumbered?

A. I would say, sir, at least three or four to one.

* * * *

RE-CROSS EXAMINATION.

By Colonel Harris:

Q. You testified on direct examination that you knew that United Construction Workers ran men off the job at United Steel. Were you working at United Steel?

A. I wasn't working up there, sir, but the Hazard local—not the Hazard. It was the Harlan Local had the contract with the company. I think out of Chicago. I think that is where the company was from that was building the tipple. We had the second order for furnishing men for the tipple after the closest local furnished their men. We were the next closest. I know that is what happened to the job. I wasn't on the job, but I was up there.

Chester Trimble.

Q. You were not on the steel job at all?

A. I wasn't on it at all, sir.

page 1002 } Q. You say you were up there. Where do you mean?

A. I was up at the tippie site, not at the time it happened, but a very few days before, and the United Construction Company, I will go far enough to say this, had three or four men, I imagine they were big orders, and they were talking about the job and this was after the A. F. of L. had already signed the contract, and there was one big guy, Pedrouli, or something like that, said it didn't make a God-damned what they done in Chicago, that they were taking that job. I heard that. I heard it myself.

Q. You heard that out at Inland-Steel?

A. Right on the tippie site, sir, at United Steel.

Q. Did you happen to be present and hear some other organizers say something at the Greenbriar job?

A. No, sir; I didn't.

Q. All of this testimony that you have given about the Greenbriar job was stuff that you heard afterwards, wasn't it?

A. It was in the papers, sir, so I figure it was more or less true. I know one guy up here was working on the job, a carpenter.

Q. You got your information out of newspapers?

A. The biggest part of it I heard, but I know it was true. I know they quit work all at once.

Colonel Harris: We move to strike all of the page 1003 } testimony of this witness as to anybody being run off the job at Greenbrier for the reason that his testimony now shows that all of his knowledge is hearsay.

Mr. Robertson: It is common knowledge all out through the mountains there. It is admissible as evidence for what it is worth to show that this episode on the Breathitt County was just part of the general pattern that they follow throughout eastern Kentucky.

The Court: The motion is overruled.

Colonel Harris: We reserve an exception.

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RE-DIRECT EXAMINATION.

By Mr. Robertson:

Q. When Hart was there on the 26th did you see his men do anything to any of the laborers to make them sign up?

Chester Trimble.

A. There would be two or three of them gang around with a pencil, just push it right in their hand and say, "Sign this or you won't work another day on this job." One of them asked me myself to sign up and I said, "I am a carpenter, I belong to the A. F. of L., I can't sign up."

He said, "You will sign up if you work any more."

That was some of Hart's associates, I figure, maybe next to him. I don't know.

Q. Did you ever see Hart after that date?

page 1004 } A. Yes, sir.

Q. Did you have any talk with him?

A. I saw him at Prestonsburg. I had a few words with him.

Q. I believe I covered that.

When you were in the toolhouse there and the men were shuffling around and reaching in their shirts, show us how they were doing it.

A. Some of them were just doing their shirt like that and some of them were putting their hands in their pockets, and just holding them in there sort of doing like that. I figured they were opening a knife. That is usually what they do. I have seen a lot of that done down there.

Mr. Robertson: I have no other questions.

The Court: Further questions, Colonel Harris?

RE-CROSS EXAMINATION.

By Colonel Harris:

Q. You figured they were opening a knife in their pocket, although you couldn't see any knives?

A. I couldn't see, Mister, but I have lived down there. I was raised down there and I know how it goes.

Colonel Harris: That is all.

The Court: All right, stand aside.

The Witness: I didn't have that answer finished, Your Honor.

The Court: All right, have a seat.

page 1005 } The Witness: As I say, I was raised down there. I have saw knives come out of men's pockets already opened, and they were found to have opened them before they took them out.

The Court: Did you see any knives on this occasion?

Paris Trimble.

A. Outside of the shack. As I remember, there were no knives in anybody's hands in the shack, although there could have been and I didn't see it because it was pretty well full. Outside on the ground most of them had knives open whittling and this, that and the other.

The Court: Any further questions?

RE-CROSS EXAMINATION.

By Colonel Harris:

Q. You didn't see any man with a knife make a pass at anybody else with the knife, did you?

A. How do you mean that, sir?

Q. Make a slash at anybody with a knife.

A. No, sir. If they had they would have hit him, Mister.

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page 1006 }

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PARIS TRIMBLE

called as a witness for the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Trimble, is your name Paris Trimble?

A. That is right.

Q. How old are you, Mr. Trimble?

A. I am 59.

Q. 59?

A. Yes, sir.

Q. Where do you live?

A. I live in Johnson County, Kentucky.

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Q. Are you a member of the A. F. of L. Local 646, Paintsville, Kentucky?

A. Yes, sir.

Paris Trimble.

Q. On July 26, 1949, were you working for the Laburnum Construction Corporation at Paintsville, Kentucky?

A. No, sir; not at Paintsville I wasn't working.

Q. I meant in Breathitt County Kentucky.

page 1007 } A. Yes, sir.

* * * * *

Q. Were you in the toolhouse out on the job site on Tuesday morning, July 26 when Hart and his men came in there?

A. I went in the toolhouse after Hart come.

Q. What happened in the toolhouse while you were in there?

A. Johnny T. Arnett and Hart were having a discussion.

Q. What did they say to each other as far as you heard?

A. Johnny T. Arnett called Hart a God-damned liar and said he couldn't prove nothing that he had promised his men.

Q. Then what happened when he called him a God-damned liar?

A. Me and Bert Preston began to try to get him quieted down.

Q. Did you succeed?

A. Yes, sir.

Q. You don't look very big to me, and you are not young. How did you happen to stay in there and be trying to quieten him down?

A. I had some good friends in there and I had
page 1008 } my son in there. I thought if trouble might occur I might be of some assistance.

Q. Were you an officer of the union at that time?

A. I was vice president.

Q. Did you go back out to the job site the next day, which would have been Wednesday morning?

A. Yes, sir.

Q. Did you meet with the other members of the union to go or did you go by yourself?

A. We met in a group and went together.

Q. Where did you meet?

A. At Salvorsville.

Q. Why did you meet to go together?

A. We didn't feel safe going alone.

Q. When you got out there to the job site did you see Mr. Bryan do anything?

A. Yes, sir.

Q. What did you see him do?

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Paris Trimble.

A. I seen him get out of the car and walk down and pick a sign up which was setting on the right of the road up on some rocks.

Q. What did he do with it?

A. He threw it over in the weeds.

Q. Then what happened?

A. He come walking back up the hill.

page 1009 } Q. That didn't surprise you any, did it?

A. It certainly did. It surprised me.

Q. Why did it surprise you?

A. I didn't expect to see him walk back.

Q. Why?

A. Well, I knew the reputation around that country and the leaves were green everywhere.

Q. What do you mean by that?

Q. They had plenty of place to hide.

Q. Did you go to work that day?

A. No, sir.

Q. You haven't been back to work out there since?

A. No, sir.

Q. After Mr. Bryan pulled down the picket sign did you go down near the tippie?

A. Yes, sir; I went over to the tippie.

Q. Did you see anybody over there around the tippie?

A. Yes, sir.

Q. Who were they?

A. We had some men around there, and then Henry Starr was there, and a few of us carpenters were around.

Q. Did you see any people there who identified themselves as being from the United Construction Workers?

A. I don't believe I seen anybody identified themselves to me, that said they were United Construction Workers.

Q. Where were they?

page 1010 } A. I went out and saw a man who was sitting on some kind of big crate and I sat down by the side of him and talked to him a few words.

Q. What was the subject of your conversation with him?

A. He asked me if we were going to try to work, and I told him I didn't think so, or some words like that.

Q. What did he say to that?

A. He says, "If you men works, there will be plenty of men here in a little bit and they will come rough."

Q. Did he say how many would be there?

A. I don't know whether he said the number or not. I don't recall it.

Paris Trimble.

Q. Did he make any mention of Mr. Bryan there?

A. Yes, sir.

Q. What did he say about him?

A. He said "if that fellow out yonder with the straw hat on and if that big-bellied son-of-a-bitch comes out here he will be picked out of that pond here and he won't walk out."

Q. Did they call Mr. Bryan a little squirt with a straw hat on?

Colonel Harris: Objected to as leading.

page 1011 } By Mr. Robertson:

Q. State whether or not he called Mr. Bryan anything.

A. He said, "The fellow with the straw hat on."

Q. Who is the fellow he referred to as that big-bellied son-of-a-bitch?

A. That was Delinger.

Mr. Robertson: The witness is with you.

CROSS EXAMINATION.

By Colonel Harris:

Q. How many men would you say were with Mr. Hart?

A. Sir?

Q. How many men would you say were with Mr. Hart?

A. I would say we were outnumbered from three to five.

Q. My question was, how many men would you say were with Mr. Hart.

A. Sixty to 75.

Q. Did you say 60 or 75?

A. Somewhere in that neighborhood, sir.

Q. When you went in the toolhouse I will ask you if this did not happen: Hart said to Bert, and by Bert I mean Bert Preston, "You will not have any more work," and Bert said, "We will as sure as hell work if you don't put on a picket." Do you recall hearing that?

A. Yes, sir.

Q. And Hart said, "We will sure put on a picket," and he got a piece of cardboard and wrote a picket sign out and told one of the boys to start carrying.

A. Yes, sir.

Q. And that is the way it happened?

.

Paris Trimble.

The Witness: Yes, sir; that is the way it happened.

Colonel Harris: That is all.

The Witness: As I recall it.

Mr. Robertson: If Your Honor please, they examined this witness from his deposition in Paintsville and therefore I ask that I be permitted to read it to the jury. He was reading from it there, page 83. He just called my attention to it. You can't just pick out one piece out of its context.

Mr. Mullen: He just got some information to ask a question. He didn't ask him if he hadn't testified so and so.

Mr. Robertson: Yes, he did.

page 1013 } Mr. Mullen: He didn't ask him did you testify so and so. Had he done that you could have put it in but he didn't do it.

Mr. Robertson: I don't care whether he did it or not, he has examined this witness from his deposition in Paintsville, Kentucky and he cannot deny it and I am entitled in fairness to this witness and in fairness to this Plaintiff to read the whole thing to the jury to see whether or not this witness is consistent or inconsistent. They have opened it by using it for their purpose. They having brought it in, I am entitled to use it.

Mr. Mullen: There was no reference to it, Your Honor. He didn't say did you testify so and so in a deposition.

Mr. Robertson: He did. I asked him what page and he said page 83.

Mr. Mullen: You asked where he got the information from. But he didn't ask him "Did you testify so and so."

The Court: The objection is sustained.

Mr. Robertson: The objection is sustained?

The Court: The objection is sustained.

Mr. Robertson: Exception for the reasons stated.

You may stand aside, Mr. Trimble.

(Witness excused.)

page 1014 } Mr. Robertson: Mr. Monroe F. Sublett.

Whereupon,

MONROE F. SUBLETT

a witness called for Plaintiff, having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Sublett, your name is Monroe F. Sublett?

A. Yes, sir.

Q. Where do you live?

A. Paintsville.

Q. How old are you?

A. 53 years old.

Q. What kind of work do you do?

A. Carpenter work.

Q. Are you a member of the Paintsville Local 646, A. F.
of L.?

A. Yes, sir.

Q. How long have you been a member of that union?

A. Nine years.

Q. In July, 1949, were you any sort of officer in the union?

A. Yes, sir.

Q. What office did you hold?

A. President of the local.

page 1015 } Q. I think I can skip a lot of this.

Were you working for the Laburnum Construction Corporation at its Breathitt County job on the week that began July 25, 1949?

A. Yes, sir.

Q. Take Monday of that week, where were you working?

A. Up at the head house at the top of the hill, the strip mine.

.

Q. Did you put in a full day's work that day, that Monday, July 25, up at the top of the hill?

A. Yes, sir.

Q. Then on the next day, Tuesday, July 26, did you go back to work?

A. Yes, sir.

Q. On that day were you working up on top of the hill or down at the tipple?

A. Working at the same place.

Q. Did anything unusual happen that day?

Monroe F. Sublett.

A. We were up there working and I heard that the United Construction were coming, and along about 12 o'clock in the day I seen some cars come across by the office at the foot of the hill, while we were off for dinner. It
page 1016 } wasn't but a little bit until Miller, I believe it was, was high line man up at the telephone, and he said the men are down there. But we worked all day that day and they never did come down to where we were.

Q. When you got the message that they were down there did you go down to the tipples?

A. No, sir.

Q. Why?

A. I was employed at the top of the hill.

Q. Then, take Wednesday, July-27. Did you go back out to the job site to work that day?

A. We went back.

Q. Before I come to that, did you attend the meeting of the Paintsville Union on Tuesday night?

A. Yes, sir.

Q. We have been all over that so I won't go into that again.

Then the next day, Wednesday morning, did you go back out to the job site by yourself or how did you go?

A. We went in a group.

Q. Where did you meet?

A. We met over there at Salyersville.

Q. Why did you go in a group?

A. Some of them thought it was best that we all go together.

page 1017 } Q. When you got over to the job site did you see Mr. Bryan there?

A. Yes, sir; Mr. Bryan was there.

Q. What happened?

A. He wanted to know how many were going to work, and the boys didn't talk much. We hadn't much more than got there until the truck rolled up with some men in it. We sat around there a little bit and directly a fellow approached me with a card. I never taken his card and looked at it. He said his name was Robinson. He said he was representing the United Construction as their business agent out of Pikeville. He said, "Are you fellows going to work, are you going to recognize our picket line?"

I said, "Where is your picket line?"

He said, "Right down there."

I said "Whereabouts right down there?"

He looked and he never could see no card up. There was

Monroe F. Sublett.

nobody walking the picket line down there but there was a man standing down just across the road from where the picket had been, up kinda on the edge of the other road, that turns down across the creek.

Q. Then what happened?

A. We fooled around there a while and I went over to the tippie directly. Some of the boys had already gone over.

When we got over there I fooled around there a
page 1018 } little bit and then I got with Jack Patrick and
we went up through the tippie. Mr. Delinger
came up there, Laburnum's superintendent. We all got to-
gether and decided we would cease for a day or two and see
if it wouldn't die down. We all went home.

Q. Were you scared to go to work that day?

A. Well, we didn't go to work.

Q. Why didn't you go to work?

A. We didn't because we thought it was the best not to go to work.

Q. Why did you think it was best no to go to work?

A. If you had been in these places you would soon find out down in that part of the country.

Q. When you went down near the tippie did you see any spotters down there for United Construction Workers?

A. I seen two men sitting over on a pile of lumber, and I passed out and I just don't recall who it was who said there is two spotters. You had better be careful. I went on out toward the saw filing shack apiece. I believe I went around into the saw filing shack that morning. We went back up in the tippie and Mr. Delinger came back up where we were, and we decided to call it off that day and not work.

Q. Did you have any conversation at any time with the two men who were sitting down there?

A. No, sir.

page 1019 } Q. Why?

A. I thought that was their business what they were doing there.

The Court: I didn't hear you. What was the answer to that question?

The Witness: I did not have any conversation with the two men sitting on the lumber pile.

By Mr. Robertson:

Q. After that Wednesday did you see Hart at all after that?

Monroe F. Sublett.

A. Anywhere?

Q. Yes, sir.

A. The next time I seen Hart was over at Paintsville.

Q. About when was that?

A. I believe it was the next day. I wouldn't be positive just what date it was. I never made no memorandum of it.

Q. Did you have any conversation with him there in Paintsville?

A. Not at that time, I didn't.

Q. Did you hear him say anything to anybody?

A. No, sir; I didn't.

Q. You just saw him on the street?

A. I seen him right in front of the Howard Hotel.

Q. But you didn't hear any conversation?

page 1020 } A. No, sir.

Q. Have you had any conversation with him at all since you left from the job site?

A. Yes, sir; I have talked some with him since then.

Q. About when was that, on one occasion or more than one occasion?

A. Oh, I have talked with him two or three times since then.

Q. Take the first time after you left the job site, what was your conversation with him, if you recall?

A. He came over there. We had a little case in court there and he came through the courthouse and said "How are you doing?" We said we just don't know yet until it is finished up.

Q. Have you had any conversation with him about the Breathitt County job?

A. No, sir. He sent me word that he wanted to see me, that he wanted me to give him a statement. I told him, the man who told me, "I think the next statement I make will be in court, wherever it will be."

Q. Did you give your deposition at Paintsville, Kentucky, last August?

A. Yes, sir.

Q. Do you know what the reputation of the United Mine Construction Workers is for being law abiding
page 1021 } or otherwise in dealing with A. F. of L. people on jobs in Kentucky?

Colonel Harris: Same objection and exception that we made to that question before, Your Honor.

The Court: Same ruling. You may answer the question.

Monroe F. Sublett.

The Witness: Answer the question? Well, according to the papers of other jobs and especially one that I went over to Lynch—When we went over there and I went out and talked to the steward of the job, it looked to me like about 12 or 15 men standing up by the fire. I had started back out and got just down from where they were working into the edge of the street next to where we had parked the car, and there was a great big man walked down, I forget what he said his name was, and he said, "What is your fellows' business over here?"

I said "I guess I have already seen the men out in the street."

He said "If you have come over here to see this job we are going to do this job. We don't give a God-damn what they do in Chicago, we are going to take this job and raise our banner over it. If you fellows have any business you better be going."

By Mr. Robertson:

Q. Did you stay or go?

A. We left, after we talked with him two or
page 1022 } three minutes, then we started on home.

Q. Have you been back since?

A. No, sir.

Q. Have you been back out to the job site in Breathitt County since you last worked out there?

A. I went back and got my tools.

Q. When was that?

A. I believe it was about a week later, maybe ten days. I wouldn't say positively. I don't have any—

Q. Have you been back any since you got the tools.

A. No, sir.

Q. Why?

A. I didn't have any business over there.

Q. Do you know a man named Lonnie Dixon?

A. Yes, sir.

Q. Do you call him that when you talk to him?

A. We call him Lonnie.

Q. Did you ever have any talk with Mr. Delinger, the Laburnum superintendent, about signing up laborers on the Laburnum job?

A. Not exactly with Mr. Delinger, I didn't, as I remember of, just what was said. I have talked with Mr. Delinger once or twice up on top of the hill after I went back up on top of the hill.

Lonnie Dixon.

Q. Whatever you have had to do about signing up any laborers on the Laburnum job, will you tell what it was?

A. I was president of the local, I guess at the time you are speaking about, but we had a business agent to take care of our business over there. I think he was a man from Paintsville by the name of Robert Poe who had the papers going around and seeing if they wanted to sign up with the A. F. of L.

page 1024 }

LONNIE DIXON

a witness for the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Dixon, your name is Lonnie Dixon?

A. Yes, sir.

Q. How old are you?

A. Forty-four.

Q. Where do you live?

A. I live at Paintsville, Johnson County.

page 1025 } Q. Do you live in Paintsville?

A. No, sir, about six miles out.

Q. Is that up a hollow?

A. Yes.

Q. What is the name of that hollow?

A. Whippoorwill.

Q. Is it pretty dark up there at night?

A. Yes, at night it is.

Q. If people come up there and holler as they are coming, can you hear them at your house?

A. How is that?

Q. If people holler as they come up the creek, can you hear them at your house?

A. If they come up the creek could I hear them at my house?

Q. If they holler.

Lonnie Dixon.

A. If they holler at me, and if I am there, yes sir. (Laughter.)

The Court: Let's move along, gentlemen.

By Mr. Robertson:

Q. Mr. Dixon, what kind of work do you do?

A. Well, I am a miner right now.

Q. Do you own your own mine, where you dig the coal and truck it out yourself?

A. Not at the time I don't.

page 1026 } Q. You are not doing that now?

A. No, sir, not now.

Q. What kind of work were you doing in July, 1949?

A. I was a carpenter.

Q. Were you working for the Laburnum Construction Corporation in Breathitt County at that time?

A. Yes, sir.

Q. I am referring now to the week which began Monday, July 25, 1949. Did you work out there that week?

A. July 25? Yes, I was out there.

Q. Were you there the day that Hart and the group of men came to the job site?

A. Yes, sir.

Q. Where were you working?

A. I was on the tippie.

Q. Then how many men would you estimate came with Hart?

A. They must have been fifty or seventy-five. I don't know how many. There was a big crowd of men.

Q. Did they have the A. F. of L. men outnumbered?

A. Oh, yes, more men than the A. F. of L., yes, sir.

Q. Were you in the toolhouse there when Hart went in there and had a talk with various people?

A. I was in there as he came in. I ate my dinner in there and came out as he was going in.

page 1027 } Q. So you were not in there after he got in the toolhouse.

A. No, I thought it was about work time, and I came right out to go to work. I had eaten my dinner. As I came out Hart was coming in, and a bunch of men with him. He was talking to Jack there. He stopped and talked to Jack Patrick and asked where the business agent was. Old man Preston was coming through, and I said, "Mr. Preston, they want you up there." He came on up and I came on out.

BLEED THROUGH

BLURRED COPY

Lonnie Dixon.

Q. Did you go back to work that afternoon?

A. No, sir, I didn't.

Q. Why?

A. They threw a picket line up.

Q. Were you scared to go to work?

A. Well, I didn't cross the picket line.

Q. Was it on account of the picket line or on account of being scared, or both?

A. Well, we are supposed to honor a picket line. We ain't supposed to cross that line, you see.

Q. I understand that, but I want to know whether you were scared to go back to work that evening.

A. I wasn't afraid of nobody, but I would rather not went across it.

Q. Why would you prefer not to go across it?

A. I don't believe it would have been safe to run across.

Q. Why?

page 1028 } A. It would cause trouble.

Q. Did any of the United Construction Workers say anything about what would happen to you if you went back to work that afternoon?

A. No, sir, they never said nothing to me.

Q. Did you ever go back out there to work after that day?

A. No, sir, I didn't.

Q. Why?

A. It wasn't settled.

Q. Were you scared to go back?

The Court: He said it wasn't settled? Is that what you said?

The Witness: That is what I said.

By Mr. Robertson:

Q. I am asking if you were scared to go back.

A. I would rather not went back, I tell you that.

Mr. Robertson: The witness is with you.

Colonel Harris: Thank you very much. That is all.

(Witness excused.)

Mr. Robertson: Estle Robinson.

Whereupon,

ESTLE ROBINSON

a witness for the Plaintiff, having been first duly sworn, was examined and testified as follows:

page 1029 } DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Robinson, your name is Estle Robinson?

A. Yes, sir.

Q. How old are you?

A. Forty-seven.

Q. Where do you live?

A. East Point, Kentucky.

Q. How far is that from Paintsville?

A. Six miles.

Q. How far is it from the Breathitt County job site of the Laburnum Construction Company?

A. Fifty-one miles.

Q. Are you a member of a union?

A. Yes, sir.

Q. What union?

A. 646.

Q. A. F. of L., Paintsville?

A. A. F. of L., carpenters union, Paintsville, Kentucky.

Q. Were you working for Laburnum in July, 1949?

A. Yes, sir.

Q. Were you working at the job site when Hart and his group came there on Tuesday, July 26?

A. I was.

Q. What part of the job were you working on?

page 1030 } A. I was working carpenter work. I was on the top of the tipple, almost to the top of the tipple, putting metal on the side.

Q. Did you eat your lunch up on the tipple or come down?

A. I eat up on the tipple.

Q. Did you work after lunch?

A. No, sir.

Q. How did you happen to stop?

A. They told us not to go back.

Q. Why didn't you go back?

A. I didn't think it was a healthy thing to do. I wanted to go back home.

Q. Did you ever go back out there to work after that day?

Estle Robinson.

A. No, sir.

Q. Why?

A. Well, I didn't think it was safe.

Q. After that day did you ever have any conversation with William E. Hart?

A. Yes, sir, I did.

Q. Do you remember about when it was?

A. I believe it was on Thursday following that, the 27th.

Q. Where did that conversation occur?

A. Paintsville.

Q. What was it?

A. We asked him why he run us off from over
page 1031 } there, and he said he didn't want the carpenters
to be in his local, but he wanted the laborers.

Q. Did he say anything about whether he would let the laborers work if they didn't all join up or not?

A. Sir?

Q. Did he say whether he would let the carpenters work if the laborers didn't join up?

A. No, he didn't say.

Q. Were you ever working up on Jennings Creek and have a conversation with him?

A. No, I wasn't.

Mr. Robertson: I have no other questions.

CROSS EXAMINATION.

By Colonel Harris:

Q. Would you like to go back home now?

A. Sure.

Colonel Harris: You can go.

The Witness: Thank you.

(Witness excused.)

Mr. Robertson: Otto Preston.

Whereupon,

OTTO PRESTON

a witness for the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

page 1032 } By Mr. Robertson:

Q. Mr. Preston, your name is Otto Preston?

A. Yes, sir.

Q. Are you related to Mr. Bert Preston, who has testified previously?

A. Yes, sir.

Q. What kin are you to him?

A. First cousin.

Q. How old are you, Mr. Preston?

A. Fifty-one.

Q. Where do you live?

A. West Van Lear, Kentucky.

Q. How far is that from Paintsville?

A. About six miles.

Q. How far is it from the Breathitt County job site of the Laburnum Company?

A. Well, let's see. I would guess about thirty-nine miles.

Q. What kind of work do you do?

A. Carpentering.

Q. Are you a member of Paintsville Local 646, A. F. of L.?

A. Yes, sir.

Q. Were you working for Laburnum Construction Corporation during the week that commenced July 25, 1949?

A. Yes, sir.

page 1033 } Q. In Breathitt County, Kentucky?

A. Yes, sir.

Q. Were you at the job site on Tuesday, July 26, when Hart and a group of men came there?

A. Yes, sir.

Q. Where were you working on that day?

A. I was working on the ground around the tipple.

Q. Did you hear Hart say anything about whether or not he had any instructions from Tom Raney?

A. Yes, sir.

Q. What did he say about that?

A. Bert Preston asked him if he wasn't going to stop the other men on the tipple the same as he was stopping us, and he said he had called Tom Raney and had instructions not to stop them unless he further notified him so.

Otto Preston.

Q. Were you in the toolhouse when Hart was in there on the 26th?

A. I was in the toolhouse when Hart came in.

Q. Did you hear any conversation between Hart and Johnny Arnett?

A. Yes, sir.

Q. What was it?

A. Hart was trying to organize the laborers or the men in that section of the country, and the way he had been telling the men, he would get them a raise in their wages
page 1034 } from what they were getting then. The conversation came on up until John Arnett told Hart that he had misrepresented the case to the men and Hart said he hadn't. John Arnett said, "You're a God damned liar."

Q. Then what happened?

A. Well, what happened didn't happen what I thought was going to happen. I thought we were all going to get killed. That is exactly what I thought, now, if you are asking for my thoughts.

The Court: He asked you what happened.

The Witness: By the time this came up I guess there were somewhere around ten or fifteen men that crowded in the little tool house that we had. We had just finished eating lunch, and I was laying on the floor. I got up off the floor as Hart came in, and sat down in the corner, right square in the corner of the toolhouse in a nail keg. I would say there were somewhere between ten or fifteen men came with Hart, with Hart in front. He stopped and talked to Jack Patrick about joining their union. Jack told him no. Also LeGrand Mayo. LeGrand Mayo showed him his card and his book, that he already belonged to a union.

By Mr. Robertson:

Q. What did Hart say to that, if anything?

A. He told him if we worked there we would have to join his union.

page 1035 } Q. Subsequent to that did you have a conversation with Hart in the Odd Fellows Hall in Paintsville?

A. You mean before that?

Q. No, after that.

A. Yes, on the street and in the hall together.

Q. State where you first met and what you did and what you talked about.

Otto Preston.

A. Hart came over and met some of the boys, and they sent after Bert Preston. In the meantime others of us were in front of the Howard Hotel and had walked maybe a little off down the street when Bert came in, when Bert got out of the car. I believe Chester Trimble went and got Bert.

Hart, when he first seen Bert, came over and told Bert he had come to apologize for running us out, off the job over there.

Q. What was said to that?

A. Bert said, "Do you still have your pickets up over there?" Hart said, "Yes." Bert said, "I don't have any talk for you."

Q. Did Hart say it would be all right to go on back and work without joining up with the United Construction Workers?

A. If he ever did, I never did hear it.

Q. Was that a conversation on the street or in the Odd Fellows Hall?

page 1936 } A. This conversation was on the street.

Q. Did you then go on into the Odd Fellows Hall?

A. Yes.

Q. What was the conversation up there?

A. It was more or less just a bunch of all of us talking at the same time. He gave us a list of all the different crafts and hour wage scales, which would have been higher than what we were getting, just along that line—still, I assumed, trying to get us to change our mind or something like that.

Q. Did he say you could go to work without joining up with his crowd?

A. No, sir.

Mr. Robertson: I have no other questions.

CROSS EXAMINATION.

By Colonel Harris:

Q. If anybody called you a God damned liar, there would have been a fight right then, wouldn't there?

A. I don't know, with me outnumbered about ten or fifteen to one. If it had just been one man, there would have been.

Q. And what you expected was a fight, wasn't it?

A. I expected shooting to start right there.

Colonel Harris: That is all.

Otto Preston.

RE-DIRECT EXAMINATION.

page 1037 } By Mr. Robertson:

Q. When Hart's men came up there did you see any of them drunk on Tuesday?

A. What constitutes a drunk man?

Q. I am asking you.

A. I will say that they were drunk or abnormal from something. They wasn't like myself or you or these other men in this court. You could tell; anybody could tell. You can tell a man who has had—

Q. He wasn't like this gentleman right here, was he (indicating Mr. Mullen)?

A. He doesn't look to be under the influence of whisky.

Q. Did you hear any shots?

A. Yes, sir, I did.

Q. How many?

A. There were about half a dozen, I guess.

Q. It didn't worry you any, did it?

A. No, it was up above me. It didn't worry me any there.

Mr. Robertson: I have no other questions.

RE-CROSS EXAMINATION.

By Colonel Harris:

Q. Is it at all unusual for people in Kentucky to drink liquor?

A. Unusual?

page 1038 } Q. I say, is it out of the ordinary and unusual for people in Kentucky to drink liquor?

A. Oh, I don't suppose it is out of the ordinary anywhere.

Colonel Harris: That is all.

RE-DIRECT EXAMINATION.

By Mr. Robertson:

Q. Did you see any of Hart's crowd make any effort to sign up any of the laborers on the Laburnum job?

A. I did.

Q. What was that?

A. I watched them sign up two, and to my way of looking at it they just forced them to sign, because they just ganged around the man and just kind of pushed and shoved him

Le Grand Mayo.

along until he got up to, I believe maybe it was a barrel or maybe a pile of lumber or something or other, and the poor fellow was scared to death. He was shaking until he could hardly sign his name. Estle Robinson walked up to me about that time and said, "Ain't that a God damned shame?"

Mr. Robertson: I have no other questions.

RE-CROSS EXAMINATION.

By Colonel Harris:

Q. Who was that poor trembling man?

A. The laborers there are something that I couldn't tell you his name to save my life. I wish I could.

Q. You never made any effort to find out the page 1039 } name of this man?

A. I never thought anything would ever be needed. I never had any idea that there would ever be anything like this come up over that.

.

LE GRAND MAYO

a witness for the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Mayo, your name is LeGrand Mayo?

A. Yes, sir.

Q. Where do you live?

A. Auxier, Floyd County, Kentucky.

Q. How big a town is that?

A. It is a mine camp of about 1,500 people. It is not altogether a mining camp. It has been in the past, but at the present time it is owned by individuals.

Q. How far is that from Paintsville?

A. I would say about nine miles.

Q. How far from the Laburnum job site in page 1040 } Breathitt County, Kentucky?

A. I would say sixty or sixty-five miles.

Q. How old are you?

A. I am sixty-four years old, past.

Q. What kind of work do you do?

Le Grand Mayo.

A. Principally carpenter work.

Q. Are you a member of Local 646 at Paintsville, an A. F. of L. union?

A. Yes, sir.

Q. Were you working for Laburnum Construction Corporation at the job site in Breathitt County, Kentucky, during the week that commenced July 25, 1949?

A. Yes, sir.

Q. Whereabouts were you working?

A. I was rated as a saw filer there. I worked in what was called the toolhouse.

Q. Was that down near the tipple?

A. Yes; that is mostly adjoining the tipple.

Q. Were you there on Tuesday, July 26, when Hart and a crowd of men came to the job site?

A. Yes, sir.

Q. Had you gotten a report as a union member that they were going to come there and run you off the job?

A. Yes, sir.

Q. What was the first you knew that Hart and
page 1041 } his crowd were there?

A. I was just finishing lunch. I believe I was packing my lunch pail. I had just had lunch. This bunch of men came rushing in and entered the room, led by this man Hart. He introduced himself. He said he was an organizer for this work. I believe he first maybe spoke to Jack Patrick, and in their conversation he accused us of scabbing there. I just spoke up and said, "I beg to differ with you. I am not scabbing here." So I went in my pocket and got my union book and my card and also my permission to work through the Paintsville local out of our local. I handed it to him, and he examined it and handed it to me, and he said, "That is all right, but if you work here you will have to sign up with us."

Q. What did you say to that?

A. Of course I told him I wouldn't sign up with him. It didn't suit me.

Q. Were you there when Hart had a run-in with Arnett?

A. Yes, sir.

Q. What happened then?

A. I would say some five or six men first came in with Hart, and it was a small place there, with not very much room. When Arnett gave Hart the lie there, damned lie, these men, several more crowded in. There is a window right here beside that door. The door is right in the end of the shack, and

Le Grand Mayo.

then there is a double window there. That is
 page 1042 } where I sawed files. They crowded up all around
 this window here and crowded in right against
 the building.

Q. That didn't worry you any, did it?

A. Sir?

Q. That didn't worry you any, did it?

A. Well, I felt that I was safe as long as I wasn't acrossing them. I didn't think I would have any trouble as long as I wasn't acrossing them. I tried to laugh it off with them.

Q. Did you go back to work any that afternoon?

A. No, sir.

Q. Why?

A. Well, they had ordered us not to work, and I knowed they meant what they said. I was raised in that country, and I didn't feel it safe to go back to work there.

Q. Were you scared to go back to work?

A. I really was.

Q. Did you go back to work out there the next day?

A. No, sir, I didn't go back the next day.

Q. Have you ever been back to work out there?

A. Sometime after that, maybe a month or so, I was called up by Haefner, the superintendent of that coal company, and he wanted me to come and go to work for them, and I went over and worked for them a couple or three weeks until the general coal strike came.

Q. Was that after Laburnum had left there?

page 1043 } A. Yes, sir.

Q. Did you have any conversation with Hart after that?

A. Not personally. I was in a crowd where he was having a conversation with Mr. Preston. Of course we were all interested.

Q. What was that conversation?

A. That conversation must have been on the 28th of July on the street in Paintsville, about him talking with Mr. Preston. We tried to get him to let them have the labor, if they liked to, and let us go on with our contract. He came in there and inquired of Mr. Preston. Some of the boys hunted up Mr. Preston. We were all around there together, and Mr. Hart came up, and him and Mr. Preston had a talk.

Mr. Preston, as I understand it, was the business agent for this union, the Paintsville union, and he and Mr. Hart were talking. Mr. Hart, the way I got it there—I was kind of pleased with it. I thought we were going to get to go back to

Le Grand Mayo.

work. He said he was kind of sorry the way things had been done over there, that he wanted to cooperate with us. The conversation just went on. I probably couldn't repeat it all. We said we would go to the hall, so we went from there to the local union hall, where they met. We talked some more up there.

Q. Did he say you could come back and go to page 1044 } work without signing up with the United Construction Workers?

A. No. He said if we went back to work over there—he asked us up in the hall just all to join up with them and go to work, and of course we didn't make that agreement.

Q. Did he say whether you could or could not go back to work over there if you didn't join up with him?

A. I wouldn't say that he just said that there, but anyway he was reading his scale of wages. He took out a paper and told us their scale and told us the viewpoints of their side of it. Bert asked him something, if he would take his picket line down, and he said, "You will have to sign up with us over there if your work over there."

Q. Did you have any talk with the laborers on the Laburnum job about the laborers getting into the A. F. of L.?

A. Yes, sir. That was on the morning previous, the same morning that Mr. Hart came in there. That was before noon.

Q. What was that conversation?

A. Those laborers came in there and asked me. They said, "You are an old union man. Why can't you help us rush this thing up and get us signed up? We understand that United Construction is coming in here, and if they do, they are liable to make us sign up with them, and we would rather belong to you all." One of them went ahead and told me he had worked a good deal at carpenter work, and he had made cabinets. He told me what all he had made. I told him if he page 1045 } was that kind of man, if he went in as apprentice and could do that kind of work, I would recommend him as a carpenter and he could advance to carpenter.

That was my first knowing of them trying to take the laborers into the A. F. of L.

Q. Where are you working now, Mr. Mayo?

A. I haven't been working since I left Breathitt County. I am right at home.

Q. On Tuesday did you hear Hart say anything about bringing anybody over from Beaver Creek?

A. Yes. In his conversation Bert asked him what he would

Le Grand Mayo.

do if he didn't get out or something like that. He said, "Well, we will put you out, and if it takes it, we will bring a bunch of men from Beaver Creek." In our discussion some of them said it was 300 or 400, but it is my understanding that he said 500 men.

Q. Did that make you feel better or worse?

A. I was like Mr. Preston, I knowed practically all those men. I knowed that that many men agin a small bunch of men like that, we couldn't work there.

Q. What is the general reputation of the United Construction Workers about how they take over a job?

Colonel Harris: Same objection to this whole line.

The Court: The same ruling.

The Witness: The general reputation is that
page 1046 } when they undertake to take over a job, they
carry it out, so I would say their reputation was
bad.

Mr. Robertson: I have no other questions?

CROSS EXAMINATION.

By Colonel Harris:

Q. When you were in the toolhouse Mr. Bert Preston said, "They are going to put up a picket line, and we can't cross the picket line, and we will have to wait and try to get it straightened out," didn't he?

A. I don't believe I heard it in that way. Mr. Preston did tell him if he put up a picket line that according to law we couldn't cross his picket line. He told us that.

Q. You gave a deposition in this case?

A. Yes, sir.

Mr. Robertson: What page, please?

Colonel Harris: Let me identify the time and the place.

Mr. Robertson: Identify the deposition, too.

The Court: He will tell you in just a minute, Mr. Robertson.

By Colonel Harris:

Q. You gave a deposition in this case before Mrs. Mabel Louise Porter, in the office of Meade and Johnson in the city of Paintsville, Johnson County, Kentucky, on the 18th and 19th days of August, 1950, didn't you?

page 1047 } A. Yes, sir.

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BLEED THROUGH

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Le Grand Mayo.

page 1049 }

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Colonel Harris: If you will let me have it I will read it for you and the lawyer over there can check me up.

I am reading on page 157, question 19:

"Question: Then on the following day, which would be Tuesday, July 26, did anything out of the ordinary happen on that day?

"Answer: Yes, sir. We worked until noontime and at noontime while we were having lunch a bunch of fellows came in there and wanted us to cease work there and there was quite a bit of argument, and the old man Preston, as I understood it, was business agent for this Paintsville local, and he and this man Hart were talking, and all the rest listening. And old man Preston told Hart we were all union men and said, "I understand that you advertise that you are for higher wages and better working conditions", and Hart said that was right. And we showed him our cards and checks, what we were getting there, and he said that was all right, and he said they were going to take that over and we would have to cease work. Old man Preston told him we had a contract there and we would have to fulfill our part of the contract, and Hart said

we couldn't, that if it took it they would take us page 1050 } by the seat of the pants and throw us out, and if that wouldn't do they would call men in from Beaver Creek and Hart said 'Come on in, boys', and I guess there were 50 or 75 fellows out there and they crowded on in and seemed to be mad, and it looked like there was going to be some trouble, and finally the old man, Preston, said 'They are going to set up a picket line and we can't cross their picket line and it looks like we will have to hold up until we get this thing straightened out and see what can be done about it.' "

By Colonel Harris:

Q. Does that refresh your recollection and is that the way you testified out there?

A. If that is in the record, that talk is bound to have happened there, but you can't testify to just the word for word having happened in a place like that among that many men where you think there is going to be trouble. I hope the jury don't take me to be that kind of man. My memory is not that good, especially when I am nervous.

Le Grand Mayo.

Q. Is that what you testified?

A. I would have to admit it if it is in that record.

Q. Some question has been asked, I think, about you going back out there the next day, which was Wednesday the 27th. Still helping him on account of his eyes I will read him the question.

page 1051 } Mr. Robertson: What page?

Colonel Harris: On page 159, question 30:

"Now, did you go back there the next day, which was Wednesday the 27th?

"Answer: Yes, sir."

"Question: What was the situation out there then?

"Answer: Well, they still had their picket line up, and men there with the pickets, but at that time they moved it over to about where the Laburnum Construction Company's office was, and they said there would be no work, and we sat around for a while."

By Mr. Harris:

Q. Is that what you testified on that occasion?

A. It must be if that is in the record, but—

Colonel Harris: That is all.

The Witness: But it was on the next day following it that I was there.

By Colonel Harris:

Q. That is right. That is the 27th, the next day.

A. It must have been on Thursday. There is one day in between there that I didn't go over there. The next morning after this trouble came up there I wasn't back there. I was back there then the following day then after Mr. Hart and them had their talk there on the street and we went up into the office of the union hall there.

page 1052 } Q. The change you want to make is that instead of its being Wednesday the 27th, it was Thursday the 28th, is that right?

A. That would be right.

Colonel Harris: All right, that is all, sir.

Le Grand Mayo.

RE-DIRECT EXAMINATION.

By Mr. Robertson:

Q. Did you go out there to get your pay check?

A. I believe that was payday time there. I am not positive of that.

Q. Was payday Wednesday or Thursday?

A. There were several others. I don't remember these dates.

Mr. Robertson: I have no more questions, Your Honor.

If Your Honor please, they examined the witness from his deposition at Paintsville and according to what they themselves said when they did that in the first instance with Bert Preston, I am entitled to read it to the jury to see whether this man is testifying substantially the same or substantially different.

Colonel Harris: We don't object.

The Court: There is no objection. We will read it tomorrow, not today.

Is that your last witness, Mr. Robertson, for today?

Mr. Robertson: My last Kentucky witness.

page 1053 } The Court: Gentlemen, let me see counsel behind the bench a second before I discharge the jury.

(Conference at the bench.)

The Court: Sheriff, you may excuse the jury until tomorrow morning at ten o'clock.

(Whereupon, at 4:55 o'clock p. m. the Court was recessed until 10:00 o'clock a. m. Wednesday, January 31, 1951.)

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page 1054 }

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Hearing in the above-entitled matter was resumed, pursuant to recess, at 10:00 o'clock a. m., before the Honorable Harold F. Sneed, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on January 31, 1951.

Le Grand Mayo.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Francis V. Lowden, Jr., William A. Johnson, Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Colonel Crampton Harris, Counsel for Defendants.

Also Present: Robert N. Pollard, Jr.

page 1055 }

PROCEEDINGS.

(Roll call of the jury.)

The Court: All right, Mr. Robertson.

Mr. Robertson: If Your Honor please, we offer in evidence now the deposition of Le Grand Mayo taken at Paintsville, Kentucky, on August 19, 1950. It was agreed yesterday by counsel for the defendants that it might be offered in evidence this morning.

The Court: All right. Take the stand, Mr. Robertson.

(At this point the deposition of Le Grand Mayo was read to the jury. Mr. Allen reading the questions and Mr. Robertson reading the answers, as follows:)

"The witness,

LE GRAND MAYO,

being first duly sworn, testified as follows, to-wit:

"DIRECT EXAMINATION.

"Question 1. Mr. Mayo, you have just stated that your name is Le Grand Mayo.

"Answer. Yes, sir.

"Question 2. What is your age?

"Answer. 64.

"Question 3. What is your occupation?

"Answer. A carpenter by trade.

"Question 4. Where do you live?

"Answer. Auxier, Floyd County, Kentucky.

page 1056 }

"Question 5. How far from Paintsville?

"Answer. About 12 miles.

"Question 6. Were you born and raised in that territory?

Le Grand Mayo.

"Answer. Yes, sir, in this locality.

"Question 7. Are you a member of any union?

"Answer. Yes, sir.

"Question 8. What union is that?

"Answer. I belong to the Brotherhood of Carpenters and Joiners.

"Question 9. Is that affiliated with the American Federation of Labor?

"Yes, sir.

"Question 10. What local do you belong to?

"Answer. Prestonsburg Local.

"Question 11. Along in July last summer were you working at the Pond Creek Pocahontas No. 1 Mine in Breathitt County in Evanston, Kentucky, where the Laburnum Construction Company and Springs Fork Development Company were developing a mine?

"Answer. I was, yes, sir.

"Question 12. Was any arrangement made between your local and the Paintsville Local whereby you got the necessary information to work out there?

"Answer. Yes, sir.

page 1057 } "Question 13. Where were you staying out there on the job?

"Answer. I boarded with Codell Construction Company,

"Question 14. How far from the No. 1 mine?

"Answer. It was up the creek I would say a mile or maybe a mile and a quarter.

"Question 15. Is that rugged country out there?

"Answer. That is pretty rugged country, and that mine operation is the only thing in there.

"Question 19. Then on the following day, which was Tuesday"—

Mr. Robertson: Wait a minute. I didn't finish it.

"I didn't see any dwelling houses or anything around there.

"Question 16. We are talking principally about Monday, Tuesday, and Wednesday, July 25, 26, 27, 1949, last summer. During a period there a short while before Monday, the 25th of July 1949, did you as a member of the carpenters union working there hear any reports that the United Construction Workers were going to run you off the job there?

"Answer. Yes, sir. It was reported in the camp there. I boarded with the Construction men, and quite a number of them said at the table or made remarks that they heard we

Le Grand Mayo.

were going to be run out of there, that they would be in tomorrow at noon to run us out.
page 1058 } "Question 17. Where were you working?"—

Mr. Allen: What is that?

Colonel Harris: We had an objection to that question, if the Court please.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

(Reading of the deposition continued as follows:)

"Question 17. Where were you working at the tippie or at the schoolhouse?

"Answer. I was working at the tippie.

"Question 18. On Monday, July 25, did you work all day that day?

"Answer. Yes, sir. I believe I worked all day that day.

"Question 19. Then on the following day, which would be Tuesday, July 26, did anything out of the ordinary happen on that day?

"Answer. Yes, sir. We worked until noontime, and at noontime while we were having lunch a bunch of fellows came in there and wanted us to cease work there and there was quite a bit of argument, and the old man Preston, as I understand it, was business agent for this Paintsville local, and he and this man Hart were talking and all the rest listening. And Old Man Preston told Hart we were all union men and said 'I understand that you advertise that you
page 1059 } are for higher wages and better working conditions', and Hart said that was right. We showed him our cards and checks, what we were getting there, and he said that was all right, and he said they were going to take that over and we would have to cease work. And old man Preston told him we had a contract there and we would have to fulfil our part of the contract. Hart said we couldn't, that if it took it, they would take us by the seat of the pants and throw us out, and if that wouldn't do, they would call men in from Beaver Creek. Hart said 'Come on in, boys' and I guess there were 50 or 75 fellows out there, and they crowded on in and seemed to be mad, and it looked like there was going to be some trouble. Finally the old man Preston said 'They are going to set up a picket line and we can't cross that picket line and it looks like we will have to hold up until we get this thing straightened out and see what can be done about it.'"

Le Grand Mayo.

"Question 20. Did you see any evidence of whisky there?

"Answer. Yes, sir. There were men there that seemed to be very much intoxicated.

"Question 21. Was there any cursing going on there?

"Answer. Yes, sir. There were loud, boisterous talk there.

"Question 22. Did those men pass any membership applications around there?

"Answer. Yes, sir. One of them asked me to
page 1060 } sign up, and there were United Mine Workers
there, and a fellow said 'No, it wasn't United
Mine Workers, it was United Construction Workers, and he
said it was all the same thing. I told him I wouldn't sign
up with him.

"Question 23. When you say he called the boys into the
shed who was that argument between, Mr. Preston and Mr.
Hart?

"Answer. Yes, sir.

"Question 24. Was a man by the name of Arnett there?

"Answer. Yes, sir.

"Question 25. Do you know of a run-in he and Mr. Hart
had?

"Answer. Yes, sir. Mr. Preston, the business agent, got
them calmed down some way.

"Question 26. Did you work any more that day?

"A. No, sir.

"Question 27. Why didn't you work?

"Answer. I couldn't afford to. I was afraid to work there
at that time.

"Question 28. Are you a married man?

"Answer. Yes, sir.

"Question 29. Got a family?

"Answer. Yes, sir.

"Question 30. Now, did you go back there the
page 1061 } next day, which was Wednesday the 27th?

"Answer. Yes, sir.

"Question 31. What was the situation out there then?

"Answer. Well, they still had their picket line up and men
there were the pickets, but at that time they had moved it
over to about where the Laburnum Construction Company's
office was and they said there would be no work and we sat
around for a while.

"Question 32. Were any of Hart's men around there the
next morning?

"Answer. Yes, sir. The men I seen there that day were
still there with their pickets that morning.

Le Grand Mayo.

"Question 33. Was anything said there Wednesday morning about whether you would work or wouldn't work?"

"Answer. I just can't recall just all that was said.

"Question 34. Did you work any there that Wednesday morning?"

"Answer. No, sir, I was just like I was the day before, I thought it would be dangerous.

"Question 35. Have you ever been back there to work since at Mine No. 1?"

"Answer. No, sir. I never worked any more at Mine No. 1 after that.

"Question 36. Why?"

"Answer. I worked for the company some page 1062 } after some three or four weeks after Laburnum Construction Corporation moved out and the company took over. They called me and I went back and filed saws for them.

"Question 37. Did you ever go back to work there any more while Laburnum Construction Corporation was there?"

"Answer. No, sir. I went back and got my tools and they were loading their stuff.

"Question 38. Why didn't you work any more there while Laburnum Construction Corporation was there?"

"Answer. I couldn't afford to. I felt there was danger there."

Mr. Allen: Now there is cross examination. Do you all want to read cross examination?

Mr. Mullen: You can go ahead and read it.

page 1063 } (The reading of the deposition continued as follows:)

"CROSS EXAMINATION.

"By Mr. Pollard:

"Question 1. Mr. Mayo, you say you are a member of the Prestonsburg Local?"

"Answer. Yes, sir.

"Question 2. When did you go to work for Laburnum Construction Corporation?"

"Answer. It was in July, 1949, I believe it was. I believe that is about the time.

"Question 3. Then you went to work just after the matters which Mr. Robertson was questioning—"

Le Grand Mayo.

Mr. Robertson: You read it wrong.

(The reading of the deposition continued as follows:)

"Question 3. Then you went to work just before the matters which Mr. Robertson was questioning you about occurred?

"Answer. I believe that was my third week, as I recall it.

"Question 4. Are you familiar with an organization known as the Paintsville Local?

"Answer. Yes, sir. I have worked with these people before.

"Question 5. To whom did you pay your union dues?

"Answer. I paid my dues in to the Prestonsburg Local regularly, but I paid my permit to work on that page 1064 } Laburnum Corporation job to Mr. Preston, who was Business Agent for the Paintsville Local.

"Question 6. How much were your dues?

"Answer. One dollar a month to the Prestonsburg Local, and I paid a permit of \$1.50 a month to work through this Paintsville Local.

"Question 7. Exactly what is this permit?

"Answer. It is giving you a right to work with brothers of a different local.

"Question 8. In other words, you couldn't work on the Laburnum job where the Paintsville Local was working, without a permit?

"Answer. No, sir. If they had a contract, I would automatically have to have a permit to work with those people.

"Question 9. Why is all that?

"Answer. That is the regulations of the order, as I understand it.

"Question 10. Who is the order?

"Answer. It is the United Brotherhood of Carpenters and Joiners of America.

"Question 11. Did you ever see the contract that Laburnum Construction Corporation had with the Paintsville Local?

"A. No, sir.

"Question 12. You don't know what was in that?

"Answer. No, sir.

page 1065 } "Question 13. What was the rate of pay you received there?

"Answer. \$1.75 an hour was what Laburnum Construction Corporation gave.

Le Grand Mayo.

"Question 14. There was quite a bit of construction work going on in this area at that time?

"Answer. Yes, sir, I believe there was right smart of carpenter work or construction work going on at that time.

"Question 15. How did it happen that you had to come over from Prestonsburg to work for the Paintsville Local when it cost you \$1.50 a month for a permit?

"Answer. These Paintsville fellows needed a saw filer, and they called me to come because, you know, everyone don't file saws, and they needed me there.

"Question 16. Do saw filers get a higher rate of pay?

"Answer. No, sir, they receive the same rate of pay.

"Question 17. Did I understand you to say you were at the tippie on July 26, which was the day that Mr. Hart and Mr. Preston were talking?

"Answer. Yes, sir.

"Question 18. Did I understand you to say that Mr. Preston made the statement that if they put up a picket line you wouldn't walk across it?

"Answer. Mr. Preston told the men there in page 1066 } the shop that we couldn't stop just on their say-
so, but if they put up a picket line, of course we couldn't cross the picket line. But he changed his mind, I reckon, because we stopped before they brought out any pickets.

"Question 19. The reason you stopped in the beginning was to find out what it was all about?

"Answer. Mr. Hart, when he came in, said, 'Boys, we are going to have to ask you to cease work here,' and Mr. Preston told him, 'We have a contract here with these people, and we just can't quit our work here.' And Hart told him, 'You fellows are scabbing,' and Mr. Preston told him we were not, that we belonged to the Carpenters Union. He said that was all right, but we would have to quit work until he got a settlement, and that he was organizing.

"Question 20. There were other people working on the job besides carpenters?

"Answer. I believe the company had begun running some coal there that day.

"Question 21. There were other men working there that were not carpenters, were there not?

"Answer. Yes, sir, there were some other men working there.

"Question 22. Common laborers?

"Answer. Yes, sir, common laborers and helpers.

Le Grand Mayo.

“Question 23. Were they members of the Paintsville Local?
page 1067 } “Answer. Some of them had received appli-
cations, but whether they had paid, I am not
able to say.

“Question 24. What is the initiation fee?

“Answer. I believe the initiation fee is \$25.

“Question 25. Did you attend the meetings of the Paints-
ville Local?

“Answer. I was at two or three of them.

“Question 26. Then you wouldn't know whether these la-
borers came to the meetings or not, would you?

“Answer. No, sir, I wouldn't know. I know some of them
were at the meeting here in Paintsville, the last one I was at.

“Question 27. Do you remember any of their names?

“Answer. No, sir.

“Question 28. You didn't see anyone take a drink up there
that day, did you?

“Answer. No, sir.

“Question 29. And no one hit you?

“Answer. No, sir.

“Question 30. And you were not harmed in any way?

“Answer. No, sir, just threats. ‘We have come here to
stop it, and we mean to stop it,’ and things like that.

“Question 31. Did I understand you to say when you went
back for your tools, that the Laburnum Construction Corpo-
ration was moving out?

“Answer. Yes, sir, as I understood it. There
page 1068 } was a man there loading Laburnum Construction
Corporation tools in a car.

“RE-DIRECT EXAMINATION.

“By Mr. Robertson:

“Question 1. During the course of Hart's conversation,
did he make any threats about bringing a larger bunch of men
from some other place?

“Answer. Yes, sir. He told Mr. Preston that if necessary,
he would bring 500 or 600 men from Beaver Creek.”

Colonel Harris: You read that wrong.

(The reading of the deposition continued as follows:)

“Answer. * * * 500 or 1,000 men from Beaver Creek.

Raymond E. Salvati.

“RE-CROSS EXAMINATION.

“By Mr. Pollard:

“Question 1. Do you remember the day you went back up there to get the tools?

“Answer. Not exactly. I would say it was probably a week or probably 8 or 10 days after this day that they stopped us from working there.

“Question 2. Some 8 or 10 days after the 26th?

“Answer. Yes, sir.

“Further deponent saith not.”

Mr. Robertson: If Your Honor please, we are going to offer the deposition of Mr. Raymond E. Salvati which was taken for the Defendants at Huntington, West Virginia, on June 15, 1950, and then we are going to offer the page 1069 } deposition of Mr. Salvati which was taken for the Plaintiff in Huntington, West Virginia, on September 18, 1950.

Mr. Allen: If Your Honor please, this deposition was taken on behalf of the Defendants, to be read in evidence on behalf of the Defendants, and it is being offered by us.

Mr. Mullen: Which one?

Mr. Allen: The one on June 15.

(At this point the deposition of Raymond E. Salvati was read to the jury, Mr. Allen reading the questions and Mr. Robertson reading the answers, as follows:)

“RAYMOND E. SALVATI,
the witness, having been first duly sworn, testified as follows:

“DIRECT EXAMINATION.

“By Mr. Mullen:

“Question. Mr. Salvati, will you please state your name, residence and business?

“Answer. My name is Raymond E. Salvati. I am presently President of the Island Creek Coal Company, Pond Creek Pocahontas Company, Marianna Smokeless Coal Company. I live at 1130 Ritter Park, Huntington, West Virginia.”

Mr. Allen: These questions are not numbered, Colonel Harris.

Raymond E. Salvati.

Mr. Mullen: That is right.

(The reading of the deposition continued as follows:)

“Question. What is the connection, if any, of
page 1070 } the Spring Fork Development Company with the
Pond Creek Pocahontas Company?”

“Answer. The Spring Fork Development Company is a wholly owned subsidiary of the Pond Creek Pocahontas Company.

“Question. How long have you been President of the Pond Creek Pocahontas Company?”

“Answer. One year.

“Question. What was your position prior to that time with them?”

“Answer. Vice-President in charge of operations.

“Question. And were you Vice-President in charge of operations in 1948 and 1949?”

“Answer. I was in '48 and for the first six months of '49.

“Question. Did the Pond Creek Pocahontas Company enter into a contract in 1948 with the Laburnum Construction Corporation, a Virginia corporation, to have any work done in Kentucky?”

“Answer. Well, the Spring Fork Development Company did.

“Question. The Spring Fork Development Company? Didn't the Pond Creek Pocahontas Company also enter into a contract? The plaintiff alleges in their notice of motion that there were two contracts.

“Answer. Yes, that is correct. The Pond Creek Pocahontas Company did enter into an agreement with
page 1071 } the Laburnum Construction Company for the
erection of the tippie and the Spring Fork Development Company, which is a wholly owned subsidiary of Pond Creek, entered into a contract for the construction of houses.

“Question. Was the work completed under the Pond Creek Pocahontas Company contract by the Laburnum Corporation?”

“Answer. No.

“Question. Was the work completed under the Spring Fork Development Company contract?”

“Answer. No, sir.

“Question. Were the contracts terminated at any time before the completion of the work?”

Raymond E. Salvati.

"Answer. It was.

"Question. Was that by letter?

"Answer. By letter.

"Question. And who prepared that letter?

"Answer. Mr. Macdonald, our attorney.

"Question. You signed it?

"Answer. I signed it.

"Question. In the letter terminating each of the contracts, which are filed as exhibits with the notice of motion, this language appears: 'About noon on July 26, 1949, we understand that your men were prevented from continuing to work on the tipple by threats and other action of representatives of the United Construction Workers, a branch of
page 1072 } District 50 of the United Mine Workers of America. Since that time no further work has been done on the tipple.' Do you know of your own knowledge of the threats or other action of the representatives of the construction workers or was that on information?

"Answer. Not personal knowledge, only through information.

"Question. The contract with the Pond Creek Pocahontas Company provided for a maximum fee for doing the work of \$12,000. Do you know what part of that fee was paid to the Laburnum Construction Corporation up till the time that the contract was terminated?

"Answer. I do not, and I suggest that in Mr. Smith's testimony he can tell you as to that.

"Question. And the same thing applies to the fee to be paid by the Spring Fork Development Company?

"Answer. Yes.

"Question. Has either of the two companies mentioned let any work to the Laburnum Corporation subsequently to the termination of those two contracts that we have spoken of?

"Answer. Do you mean after—

"Question. After the termination of the contract.

"Answer. No work has been done.

"Question. Subsequent to that time has any work been let by the Pond Creek Pocahontas Company or
page 1073 } the Spring Fork Development Company?

"Answer. We had two contracts let since that time.

"Question. About what was the size of those, do you know?

"Answer. Let's see—about forty houses and a school-house and a store.

"Question. Were they let on bids?

Raymond E. Salvati.

"Answer. Yes, they were let on bids.

"Question. Did the Laburnum Company bid on them?

"Answer. They did not.

"Question. If the Laburnum Company had bid and had been the low bidder, would the work have been let to them?

"Answer. Yes, it would have been.

"Question. Were you down at the site of the work being done by the Laburnum Construction Company at the time of the trouble there?

"Answer. I was present on an inspection trip on one particular day when trouble did arise.

"Question. Did you see a picket line there at that time?

"Answer. I did.

"Question. Did you note any violence or hear of any threats while you were there?

"Answer. I did not.

"Question. Do you know whose employees composed the picket line?

page 1074 } "Answer. I couldn't—I don't know.

"Question. Did the Pond Creek Pocahontas Company have contracts with the Allen-Codell Construction Company, Incorporated, for work at the site on the property where the Laburnum Construction Company were working at the same time?"

Mr. Robertson: There was an objection, and then:

(The reading of the deposition continued as follows:)

"Answer. I can answer it?

"Question. Yes.

"Answer. We did have a contract with those two concerns.

"Question. Do you know whether the employees of either of those concerns were on strike at the time, that is, between July 25 and August the 2d, at the time that the Laburnum Corporation terminated their work?

"Answer. I do not know.

"And further this deponent saith not."

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page 1075 } Mr. Allen: Your Honor, this deposition of
Mr. Salvati was taken on behalf of the Plaintiff
to be read in evidence on behalf of Plaintiff.

Raymond E. Salvati.

The Court: All right.

Mr. Robertson: At the second page read there at the top of the page, too, Mr. Allen.

The Court: When were these depositions taken?

Mr. Robertson: The 18th of September, 1950.

(At this point the deposition of Raymond E. Salvati was read to the jury, Mr. Allen reading the question and Mr. Robertson reading the answers, as follows:)

The witness,

RAYMOND E. SALVATI,

being first duly sworn, testified as follows, to-wit:

"Mr. Robertson: I wish the record to show that at the taking of these depositions there were present Mr. Noble Hobbs, Mr. David Hunter, Mr. Yelverton Cowherd, general counsel for the United Construction Workers and District 50 affiliated with the United Mine Workers.

"DIRECT EXAMINATION.

"By Mr. Robertson:

"Question. Mr. Salvati, your name is Raymond E. Salvati?

"Answer. That is correct.

"Question. And you are the same Mr. Salvati who gave your deposition for the defendant in this action on June 15, 1950?

"Answer. That is correct.

page 1076 } "Question. Just to get the context complete, will you state again your residence and business?

"Answer. I am President of Island Creek Coal Company, President of the Pond Creek Pocahontas Company.

"Question. How long have you been President of these two companies?

"Answer. Since June, 1949.

"Question. And what was your connection, if any, with each of these companies prior to that date?

"Answer. I was Vice-President in charge of operations.

"Question. Does the Island Creek Coal Company have any associated or subsidiary companies?

"Answer. It does.

Raymond E. Salvati.

"Question. Could you name them, please?

"Answer. Island Creek Coal Company as a parent Company has subsidiaries Island Creek Coal Sales Company, the Island Creek Fuel and Transportation Company, Queen City Coal Company, Carnegie Coal Corporation and the Carnegie Coal Corporation owns the subsidiary of the Carnegie Dock and Fuel Company and the Brooks County Coal Company. Another subsidiary of Island Creek is United Thacker Coal Company. They in turn own the Pigeon Creek Development Company.

"Another subsidiary of the Island Creek Company is Aldredge Realty Company. The Pond Creek Pocahontas Company is a parent company and has as its subsidiaries Marianna Smokeless Coal Company, Bartley Land Company, Bartley Water Company and Spring Fork Development Company.

"Question. Mr. Salvati, in tonnage produced how did Island Creek Coal Company compare in size with other commercial coal companies in the United States during the years 1948, 1949, and 1950?"

Mr. Mullen: There was an objection interposed at that point, Your Honor, based on the ground that it is irrelevant and has no bearing on any issue in this case.

Mr. Robertson: We think it is relevant, Your Honor, as showing the value of the business connection which Laburnum had built up.

The Court: The Court will allow the question for what it is worth.

Mr. Mullen: We note an exception.

Mr. Allen: I will repeat the question.

(The reading of the deposition continued as follows:)

"Question. Mr. Salvati, in tonnage produced how did Island Creek Coal Company compare in size with other commercial coal companies in the United States during the year 1948, 1949, and 1950?"

Mr. Robertson: There is another question that goes with that.

page 1078 } (Reading of the deposition continued as follows:)

Raymond E. Salvati.

"Question. I mean that to include the Pond Creek Pocahontas Company also.

"Answer. In the year '48 Island Creek and Pond Creek and their subsidiaries were the third largest in the state of West Virginia. In '49 they came out with the same standing for commercial mines.

"Question. You said in West Virginia. Did you mean in West Virginia or in the United States?

"Answer. In the United States.

"Question. How did they rank in size, in tonnage produced in the state of West Virginia?

"Answer. They are the largest.

"Question. I think in the list you gave there you stated the connection between the Island Creek Coal Company and the Pigeon Creek Development Company.

"Answer. Island Creek Coal Company and Pigeon Creek Development Company, that is correct.

"Question. I don't know whether you said this or not. What was your position with the Pond Creek Pocahontas Company and the Island Creek Coal Company prior to the time you became president of both those companies?

"Answer. I was Vice-President in charge of operations.

"Question. And did you occupy that position during the month of October, 1948?

page 1079 } "Answer. I did.

"Question. Did the Pond Creek Pocahontas Company enter into a contract with Laburnum Construction Corporation dated October 28, 1948, for the construction of a coal preparation plant at the number one Kentucky mine of the Pond Creek Pocahontas Company in Breathitt County, Kentucky?

"Answer. It did.

"Question. Have you a copy of that contract?

"Answer. I do have."

Mr. Allen: Then the contract is offered in evidence and it already has been offered here, Your Honor.

(Reading of the deposition continued as follows:)

"Question. Did you execute that contract on behalf of Pond Creek Pocahontas Company as its Vice-President?

"Answer. I did.

"Question. When the contract that we have just introduced was executed did the Pond Creek Pocahontas Company

Raymond E. Salvati.

contemplate construction work in Breathitt County, Kentucky, in addition to work on the coal preparation plant at the No. 1 mine?

"Answer. It did."

Mr. Mullen: If Your Honor please, there was an objection interposed at that point to the question and answer, it being that it called merely for speculative information, has no bearing on the question, and is shown to be speculative page 1080 } tive by the word "contemplate"

Mr. Robertson: It is the same objection that has been ruled on.

The Court: I overrule the objection and will allow the question and answer for what it is worth.

Colonel Harris: We reserve an exception.

(Reading of the deposition continued as follows:)

"Question. What additional work did the company contemplate?"

Mr. Mullen: The same objection.

Colonel Harris: We reserve an exception.

(Reading of the deposition continued as follows:)

"Question Answer the question, please

"Answer. We have it listed here, and the work that I submitted to my Board of Directors through our President at that time and was asked by the members of the Board to explain just what was necessary in the construction of our entire facilities in Breathitt County for the operation of our number one and number three mines.

"The tabulation showed, and was approved by our Board of Directors, the following:

"Machine shop—\$60,000

"Lamp House, superintendent's office, oil house—\$12,000

"Warehouse building—\$25,000

"200 houses—\$300,000.

page 1081 } "Ten supervisor houses—\$60,000

"A large store—\$75,000

"One service store—\$15,000

"A heating plant for tipple at our mine No. 1—\$23,000

"Tipple Shop—\$3,000

Raymond E. Salvati.

"Foundations for tipple at our Mine No. 3—\$25,000

"Sand house—\$7,000

"A water system in connection with our preparation plants and houses, \$12,500, for a total of \$617,500.

"Question. And you say that work was authorized by the Board of Directors?

"Answer. It was.

"Question. When the contract that we have introduced here, dated October 28, 1948, was executed, did the Pond Creek Pocahontas Company or did you as Vice-President of Pond Creek Pocahontas Company have any understanding with Laburnum Construction Corporation with reference to the additional work that you have just tabulated?

"Answer. I did."

Mr. Mullen: The same objection, Your Honor.

The Court: Same ruling.

Colonel Harris: We reserve an exception.

(Reading of the deposition continued as follows:)

"Question. What was the understanding?

"Answer. At the time that Mr. Bryan, President of Laburnum Construction Company, came to Huntington within this same office I asked him if he would not consider going over into Breathitt County and building our preparation plant. I told him that the country was undeveloped, they had no roads, had no houses, had no people, and that it would be a hard job to do, that if he would go over there and undertake the installation of this preparation plant that I would consider and give to him the additional work that would be necessary in connection with the operation of those mines, that I felt that once in the job necessary tools, necessary buildings to house those men and all the facilities in connection with the preparation plant would be there, that he would be in a position to go ahead and do this additional work.

"This list that I just gave, I said it was approved by our Board of Directors. It was gone over with him and I said that there wasn't any reason at all that he shouldn't go right ahead with all the construction of all these things in connection with the facilities in the operation of those two preparation plants.

"Question. Were you influenced in that decision by any proficiency his organization would acquire by virtue of hav-

Raymond E. Salvati.

ing done this original work on the preparation plant in that particular Territory for the kind of work?

“Answer I felt that once situated there and had the experience in the building of that preparation plant, he would be better prepared to do the job on these other items than anybody else that we would get.”

Mr. Mullen: Your Honor, there is an objection at that point on the ground that what might have influenced the witness is not proper evidence.

Mr. Robertson: It is the same objection, just in a different form, Your Honor.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

(Reading of the deposition continued as follows:)

“Question. Mr. Salvati, you have testified that for several years Island Creek and Pond Creek and their subsidiary companies were the third largest producers of coal in the United States and the largest producers of coal in the West Virginia field. By virtue of the volume of their production are those companies constantly engaged in construction work such as Laburnum is qualified to do and has done?”

“Answer. That is correct.

“Question. And would you expect that company to have other work if that agreement had continued in addition to the work you have tabulated there?”

“Answer. We always have work at all times in connection with the construction of new mines and new facilities, rehabilitating our companies, and our company always has some sort of construction work going on most all the time.

page 1084 } “Question. Did the Spring Fork Development Company enter into a contract with Laburnum Construction Corporation dated December 15, 1948, for the construction of twenty-five dwellings on sites near the number one mine of Pond Creek Pocahontas Company in Breathitt County, Kentucky?”

“Answer. That is correct.

“Question. Have you got a copy of that contract?”

“Answer. I do have.”

Mr. Allen: I think, Your honor, that contract has already been offered in evidence.

Raymond E. Salvati.

The Court: It has been offered in evidence.

(Reading of the deposition continued as follows:)

“Question. Was this work to be performed by Laburnum Construction Corporation on a basis of cost plus a fee of five per cent, the total amount of the fee not to exceed the sum of \$2,500?

“Answer. That is correct.

“Do you mean by that that the work for the construction of the twenty-five houses, dwellings?

“Answer. That is correct.

“Question. Was the work for the construction of the twenty-five houses a part of the additional work contemplated in your understanding with Laburnum Construction Corporation regarding additional work about which you have testified?

“Answer. It was.

page 1085 } “Question. Did the Pond Creek Pocahontas Company enter into a contract with Laburnum Construction Corporation dated December 8, 1948, for the construction of a telephone line approximately eleven miles in length extending from Carver, Kentucky, to the number one Kentucky mine?

“Answer. That is correct.

“Question. How did it happen to go from Carver, Kentucky, to mine number one?

“Answer. That was the only available place that we could have telephone connections.

“Question. Was the construction of the telephone line by Laburnum Construction Corporation on a basis of cost plus a fee of five per cent?

“Answer. It was.

“Question. Have you a copy of that contract for the construction of the telephone line?

“Answer. I do.”

Mr. Allen: I think that is already in evidence, Your Honor.
The Court: I think it is in evidence.

(Reading of the deposition continued as follows:)

“Question. Did I ask you, was the contract for the construction of the telephone line a part of the work contem-

Raymond E. Salvati.

plated in your understanding with Mr. Bryan for additional work?

"Answer. It was.

"Question. And that work was done on a five page 1086 } per cent basis?

"Answer. On a cost plus fee of five per cent.

"Question. Did the Pond Creek Pocahontas Company during the month of July 1949 instruct Laburnum Construction Corporation to construct a schoolhouse near the number one Kentucky mine of Pond Creek Pocahontas Company in Breathitt County?

"Answer. That is correct.

"Question. Did Laburnum Construction Corporation proceed with the construction of the schoolhouse?

"Answer. They did.

"Question. Was this work to be performed by Laburnum Construction Corporation on a basis of cost plus a fee of five per cent?

"Answer. That is correct.

"Q. Was this a part of the additional work covered by your understanding with Laburnum Construction Corporation regarding additional work?

"Answer. It was.

"Question. Did the Pond Creek Pocahontas Company advise Laburnum Construction Corporation during July, 1949, to prepare to proceed with the construction of the concrete foundations for the coal preparation plant at the number two mine of Pond Creek Pocahontas Company in page 1087 } Breathitt County, Kentucky, during August 1949?

"Answer. That's right.

"Question. Was this work to be performed by Laburnum Construction Corporation on a basis of cost plus a fee of five per cent?

"Answer. That is right.

"Question. Was this a part of the additional work covered by your understanding with Laburnum Construction Corporation regarding additional work?

"Answer. That is correct.

"Question. Did Laburnum Construction Corporation proceed with the construction of the concrete foundations for the coal preparation plant at the number two mine?

"Answer. They did not.

"Question. Why not, if you know?

Raymond E. Salvati.

"Answer. They were interfered with, and with the District 50 United Mine Workers and the experience they had at our number one preparation plant, being run off of the job there, made it impossible for them to start on this particular work that was assigned to them."

Mr. Mullen: If Your Honor please, there was an objection interposed there. The answer is objected to as being hearsay. The witness does not have the knowledge and does not testify that he knew this of his own knowledge.

Mr. Robertson: That is the same objection page 1088 } that has been, Your Honor. It came to him as president of the company, and he is testifying as president of the company.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

(Reading of the deposition continued as follows:)

"Question. Was that information reported to you in the regular course of your duties and responsibilities as president of the company?

"Answer. I was vice-president in charge of operations at the time. The manager of the property reported to me, and in my official capacity I am testifying as to what I just said.

"Question. Did the Pond Creek Pocahontas Company or the Spring Fork Development Company advise Laburnum Construction Corporation that it should proceed to install asbestos shingles on the twenty-five dwellings during August, 1949.

"Answer. Yes.

"Question. Were those shingles on the roof or on the side of the houses or on both, or do you recall?

"Answer. No, the lumber was cut there on the job and after the houses were constructed they just didn't look as good and weren't as comfortable as they should be, and we felt that those asbestos shingles would make a much warmer and safer and better job and look better and be better for the employees, and at that time we decided to go ahead and use page 1089 } this asbestos shingle and it's on the sides of the house and not on the roof.

Q. "Was this shingle work to be performed by Laburnum Construction Corporation on a basis of cost plus a fee of five per cent?

"Answer. That is correct.

Raymond E. Salvati.

Question. Was that shingle work a part of the additional work covered by your understanding with Laburnum Construction Corporation regarding additional work?

"Answer. That is correct."

Mr. Mullen: If Your Honor please, there was an objection interposed at that point. The question and answer are objected to because the witness has already testified that this matter arose after the houses were completed and because of their appearance and it therefore could not have been part of the work contemplated prior to the work being let.

Mr. Robertson: If the Court please, it is the same objection that has been made time and again and the Court has already ruled on it. It is admissible to show the value of the business connection which Laburnum built up with the companies out there.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

page 1090 } (Reading of the deposition was continued as follows:)

"Question. Since August the 4th, 1949, has the Pond Creek Pocahontas Company constructed an addition on the rear of the coal preparation plant at the number one mine in Breathitt County, Kentucky?

"Answer. That is right.

"Question. What was the cost of that work?

"Answer. In the neighborhood of \$4,000.

"Question. Was that work a part of the additional work covered by your understanding with Laburnum Construction Corporation regarding additional work?

"Answer. That is correct. And I want to say that any of these items that you have asked me about, such as the shingles, the building of the schoolhouse and other items that came up during the construction, I told Mr. Bryan that any work of that kind—he would be given the work and installation of any work that might come up at any time.

"Question. With reference to the other portions of the additional work contemplated when the contract between Pond Creek Pocahontas Company and Laburnum Construction Corporation dated October 28, 1948, was executed, would you have had Laburnum Construction Corporation perform that work on the basis of cost plus a fee of five per cent if Laburnum Construction Corporation had still had its organization and

Raymond E. Salvati.

equipment at the job site and if the United Mine
 page 1091 } Workers of America and its branches had not
 threatened to interfere with the work?

"Answer. I would have."

Mr. Mullen: There is an objection interposed at that point on the ground that what the witness might have done under the circumstances did not rise are immaterial and irrelevant to the issues in this case.

Mr. Robertson: That is the same ruling. What I replied out there was that it was relevant and material and admissible for the same reasons already stated, which is to show the value of the business relationship.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

(Reading of the deposition was continued as follows:)

"Question. When the contract between Laburnum Construction Corporation and the Pond Creek Pocahontas Company dated October 28, 1948, was executed, did you know that Laburnum Construction Corporation intended to use workers who were members of local unions affiliated with the American Federation of Labor?

"Answer. I did, and in explanation of that, with my engineers and our operating people, in entering into any cost fee basis it was necessary for us to know the rates that he contemplated paying for his skilled and unskilled men, and

Mr. Bryan showed me the various rates and said
 page 1092 } at that time he was affiliated—his company—with
 the American Federation of Labor and consequently must pay its rates as outlined in the book that he showed me, and so because of my asking him as to the rates is my reason for knowing his affiliation with the American Federation of Labor.

"Question. You have mentioned the work at the coal preparation plant at the number one mine and the work on the twenty-five houses and the work on the telephone line and on the schoolhouse and in putting asbestos shingles on the houses. In addition to that had Laburnum Construction Corporation performed other work for Pond Creek Pocahontas Company or Island Creek Coal Company?

"Answer. They have.

"Question. Have you got a tabulation there showing how many contracts there were altogether?

Raymond E. Salvati

"Answer. I have here a memorandum showing the contract dates, the job number, description and the amount of each of those particular jobs. This is for Pond Creek, Island Creek and our subsidiaries.

"Question. Does that show whether any of them had been commitments prior to October 28th, 1948.

"Answer. Yes. There are several here on this list that were prior to that time.

"Question. Does this show which they are, or would you have to read it into the record?
page 1093 } "Answer. I can read it into the record, if you like.

"Question. I would like you to show which are prior to October 28th and I will introduce the entire list."

Mr. Mullen: To be consistent, Your Honor, that was objected to earlier in the case and the same objection arises here.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

Mr. Allen: I will repeat the question so he will not have to repeat the objection.

(Reading of the deposition was continued as follows:)

"Question. I would like you to show which are prior to October 28th and I will introduce the entire list.

(The objection.)

"Question. Will you state which of those commitments were prior to October 28, 1948?

"Answer. Here is a contract date on fifty prefabricated dwellings. The date is 9/6/47 in the amount of \$95,631. Two stores, Brookside and Valley View Stores, the date 6/29/48, in the amount of \$66,486. Appliance warehouse, contract date 9/19/48, cost of \$40,895. Coal preparation plant, date 10/28/48 in the amount of \$265,370. I think that's all that were prior to October the 10th.

"Question. I call your attention there to the fourth item.

"Answer. Store number fifteen, on the 10th,
page 1094 } 21st, '48, total amount of \$54,313."

Mr. Allen: That is offered in evidence.

Mr. Robertson: I want to show that to the jury, please. It is with those exhibits there.

Raymond E. Salvati.

(Document exhibited to the jury.)

(Reading of the deposition continued as follows:)

"Question. Mr. Salvati, had the United Mine Workers of America or the United Construction Workers or District 50 affiliated with United Mine Workers of America or United Mine Workers of America interfered with the operations of Laburnum Construction Corporation on any of the jobs you have mentioned prior to July 1949?"

Mr. Robertson: That question was objected to and reframed.

Mr. Mullen: It was reframed.

The Court: Read it as reframed.

(Reading of the deposition was continued as follows:)

"Question. Did it come to your attention or not as an officer of the company that either the United Construction Workers District 50 affiliated with the United Mine Workers of America or United Mine Workers of America had interfered with the performance by Laburnum Construction Corporation of any of the commitments under discussion prior to the interference which commenced in July, 1949?"

page 1095 { "Answer. I can answer the question?"

"Question. Yes, sir.

"Answer. We had no interference in the list of contracts that I just read into the record. All of them started on time and were completed at the time that the contract was entered into as to the completion date, and in my official capacity as Vice-President no official notice came to me that any interference was made in the construction of these particular jobs.

"Question. My question directed your attention to July 1949. You are referring to work done prior to that time, I take it.

"Answer. That's right.

"Question. Did Island Creek Coal Company or one of its associated or subsidiary companies enter into a contract with Hamill Construction Company of Huntington, West Virginia, for the construction of an office building near Delbarton, West Virginia?"

Mr. Mullen: If Your Honor please, that is objected to. The contract with some other party for some other work is not pertinent to the issue in this case.

Raymond E. Salvati.

Mr. Robertson: It is to show the pattern in eastern Kentucky and that they ran them off that job, if my memory serves me right. I think that will be brought out page 1096 } in a few questions.

The Court: The Court will allow the question for what it is worth.

Colonel Harris: We reserve an exception.

(Reading of the deposition was continued as follows:)

"Question. Answer the question, please.

"Answer. We did enter into a contract with the Hamill Construction Company.

"Question. Was the Hamill Construction Company able to complete that contract?

"Answer. They were not.

"Question. Why?

"Answer. They were interfered with by the District 50 United Mine Workers and the men were run off the job and unable to complete the work."

Mr. Harris: If the Court please, I understood that we had an objection which extended to everything on "why" questions.

The Court: Is that the understanding of you gentlemen?

Mr. Robertson: Yes.

The Court: That is the understanding.

(Reading of the deposition continued as follows:)

"Question. Did Island Creek Coal Company during the sprong of 1950 invite Laburnum Construction Corporation to submit a proposal for the construction of a church and a recreation building near Delbarton or Holden, West Virginia?

"Answer. They did.

"Question. Did Laburnum Construction Corporation submit a proposal for that work?

"Answer. Mr. Bryan came in to see me a couple of days before the dates of the time for the proposal to be submitted and said at that time that he felt that under the circumstances that it would be impossible for him to bid, he could bid but he couldn't complete the job.

"He felt that if I wanted to enter into an agreement with him in some manner as to having guards to guard the job, even the building that he might put up, keep them from being

Raymond E. Salvati.

burned down and his men submitted to all the threats and violence, that he then would submit a bid.

"I told him that I would like to consider the matter but it wasn't a matter that I felt that the company should be drawn into and I wanted to confer with the chairman of our board because it was a pretty important situation with us and I didn't want to take the entire responsibility of answering that particular day.

"Subsequently I did confer with our chairman and after the conference we felt that it was inadvisable for Laburnum Construction Corporation to bid on these two particular buildings, that we felt that if they did it might
page 1098 } cause us a lot of trouble around our mines, and
I wrote him a letter within two or three days of that conference."

Mr. Mullen: If Your Honor please, the same objection to that, the frame of mind of the witness is immaterial to this case and improper.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

(Reading of the deposition was continued as follows:)

"Question. In this connection I hand you what purports to be a letter dated May 18, 1950, from you to Mr. Bryan and ask you if that's the letter to which you referred?

"Answer. That is correct. That is the letter."

Mr. Allen: The letter is offered as Exhibit 5, according to the deposition here.

Mr. Mullen: It was already introduced and objection made at the time it was introduced.

The Court: Very well.

(Reading of the deposition continued as follows:)

"Question. In the course of the last mentioned conversation you had with Mr. Bryan, did he tell you whether or not he had had a conversation with Mr. David Hunter regarding this proposed work?

"Answer. He did refer to a conference that he had with Mr. Hunter at Pikeville, I guess.

Raymond E. Salvati.

"Question. Do you recall what the substance page 1099 } of that conversation was as reported to you by Mr. Bryan?"

Mr. Mullen: There was an objection there, that that was purely hearsay under those circumstances.

Mr. Robertson: We think it is admissible, Your Honor, as showing why this business relationship was broken up, one of the things in the whole chain of evicence as to why it was broken up.

The Court: The Court will sustain that objection.

Mr. Robertson: Plaintiff excepts for the reasons stated.

Will you state where I may commence again, Your Honor? Maybe we should just go ahead with the next question.

The Court: Yes.

(Reading of the deposition continued as follows:)

"Question. I hand you what appears to be a copy of a letter dated May 23, 1950, from Mr. Bryan to you and ask you if you received the original of that letter in response to your letter to Mr. Bryan of May 18, 1950.

"Answer. I have the original here."

Mr. Allen: The letter is offered in evidence, Your Honor, and there is objection.

Mr. Mullen: There is objection. It was offered on the examination of Mr. Bryan and objected to. As I recall at that time it was withdrawn and Your Honor did not rule on it. We make the same objection. It is a self-page 1100 } serving declaration from Mr. Bryan written long after this suit had been brought.

Mr. Robertson: That is right, and I withdraw it now.

The Court: Very well.

Mr. Allen: Suppose you start about the middle of page 26.

(Reading of the deposition continued as follows:)

"Question. Mr. Salvati, has the Laburnum Construction Corporation been invited by Pond Creek Pocahontas Company or Island Creek Coal Company or any of their associated or subsidiary companies to submit proposals for any work since May 18, 1950?

"Answer. They have not.

"Question. Why?

Raymond E. Salvati.

"Answer. I think it is pretty well established by my letter here in May that we felt that any invitation that we would extend to Laburnum, that it would cause us a great deal of trouble and we possibly wouldn't get the work completed and felt it advisable to not ask him to bid on any business that we have given since that time."

Mr. Allen: Do you insist on the objection there, Mr. Mullen?

Mr. Mullen: We already have objection to any "why's", so we need not repeat it, since that is continuing.

page 1101 } (Reading of the deposition continued as follows:)

"Question. What was the situation which developed as outlined in your testimony here today? Would you expect Laburnum Construction Corporation to have continuously since July, 1949, and down to this time and in the future, be doing work for the Pond Creek Pocahontas Company and the Island Creek Coal Company?"

Mr. Mullen: We objected to that, Your Honor, on the ground it calls solely for an opinion of the witness, for speculation as to future events, and he could not know at the time what circumstances might arise or how the matter might have affected it.

Mr. Robertson: Your Honor has ruled repeatedly that it is admissible for what it is worth to show the value of the relationship that Laburnum had built up.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

(Reading of the deposition continued as follows:)

"Question. Will you answer the question, please?"

"Answer. We couldn't be assured of a completion of a job that we might give to Laburnum Construction Corporation with the experience in the last year and a half that he has had, of ever having that job completed. In the opinion of the operating people and myself, we felt that it was inadvisable, as it might spread to the operation of our coal
page 1102 } mines and other work we might be doing, so because of that situation we feel it inadvisable to ask Mr. Bryan of Laburnum Construction Corporation for bids on any work that we might have.

Raymond E. Salvati.

“Question. What is the connection between the Island Creek Coal Company and the Pond Creek Company?”

“Answer. Island Creek Coal company and Pond Creek Pocahontas Company have common management but entirely different directorship and are two different companies entirely.”

Mr. Allen: There is cross examination by Mr. Mullen. Do you all want to help me out by reading this?

Mr. Mullen: We will do it if you want help.

The Court: Let's recess for five minutes.

(Brief recess.)

page 1103 } Mr. Mullen: If Your Honor please, we are going to withdraw the objection we made to the question at the bottom of page 24, and let him answer it.

The Court: No. 24?

Mr. Mullen: Yes. That is the one Your Honor sustained the objection on. We are going to withdraw it.

Mr. Robertson: You read the question.

(The reading of the deposition continued as follows:)

“Question. Do you recall what the substance of that conversation was as reported to you by Mr. Bryan?”

“Answer. He said that Mr. Hunter told him that if he bid on that job and came over into Mingo County to put up these two buildings that he would—without any contract with their organization—that he would absolutely do everything in his power to see that he did not build those buildings.”

Mr. Robertson: Go ahead, now. You have withdrawn. Let's keep on going, now. Read the next question.

(The reading of the deposition continued as follows:)

“Question. Did he indicate what kind of things in his power he would do?”

“Answer. I don't recall specifically just exactly what he said in that regard other than he certainly wasn't going to let him build the buildings.”

Mr. Mullen: Do you want us to read the cross examination?

page 1104 } Mr. Allen: If you please.

Raymond E. Salvati.

(The reading of the deposition continue as follows, Mr. Mullen reading the questions and Mr. Robertson reading the answers:)

"CROSS EXAMINATION.

"By Mr. Mullen:

"Question. Mr. Salvati, was the agreement that you say you made with Mr. Bryan to do future work approved by your Board?

"Answer. It's not necessary to be approved by my Board.

"Question. The work that you spoke of in connection with putting shingles on and work on the schoolhouse and other items prior to that, they were merely changes and developments in the contract as it went along, were they not?

"Answer. I would say that they were changes that are made from time to time as you go along on any construction job.

"Question. And when you make those changes the contractor doing the job is the one to carry out those changes?

"Answer. Not necessarily, but in this particular case it was arranged as well as understood that Laburnum Construction Company would have that right.

"Question. In the letter of May the 18th, 1950, which you wrote Mr. Bryan you state, 'In view of this situation, it seems to me that it would be better that you refrain page 1105 } from bidding because of the facts outlined to me in our conversation Monday evening.' Did you have personal knowledge of those facts or was this letter written merely on what he stated to you?

"Answer. I had personal knowledge of what he had said to me the day before and the experience that he had in all the jobs and not completing them, and in view of the fact that he didn't complete our preparation plant, he didn't complete the foundation work at number two, he didn't finish the schoolhouse job, and it gave us a lot of trouble, cost us a lot of money as well, that I felt it wasn't advisable to give him any further work, and after he discussed the situation with me and told me about his discussion with Mr. Hunter that I felt it would be inadvisable, as I gave here a little while ago my evidence, that I didn't take that responsibility on myself. I conferred with the chairman of our Board and he agreed with me and as a result of our conference this letter went forward to Mr. Bryan.

"Question. But as to any threats or anything that he

Raymond E. Salvati.

claimed that Mr. Hunter had made, you had no personal knowledge of those. They were only what he reported to you?

"Answer. That's right. Nobody reported other than Mr. Bryan.

"Question. Mr. Salvati, the miners and the workers at the tipple where the contracts were being perpage 1106 } formed, are they members of a union?

"Answer. Yes, sir."

Mr. Robertson: I withdraw all my objections to everything in his deposition.

Mr. Mullen: That question had been answered before the objection was interposed.

(The reading of the deposition continued as follows:)

"Answer. Mr. Mullen, at the time, however, as I remember now, we didn't have our charter yet. They didn't have the charter. Our charter was not delivered until about August the 1st of 1949, so when I answered that they were members, they subsequently became members.

"Question. You dealt with the United Mine Workers or their representative prior to that date?

"Answer. Oh, yes.

"Question. Did any of those members take part in any of the incidents which are charged in this suit as interference by the union sued?

"Answer. Not to my knowledge.

"Question. Did Mr. Bryan ever give you any reason as to why he would not deal with the United Construction Workers for his unskilled labor?

"Answer. He did not."

Mr. Mullen: Do you want me to read the repage 1107 } direct, too?

Mr. Allen: If you don't mind.

(The reading of the deposition continued as follows:)

"RE-DIRECT EXAMINATION.

"By Mr. Robertson:

"Question. Mr. Salvati, you said that Mr. Bryan reported to you the threats that had been made against his men on the work. Did he report that to you as an official of your company to whom he was responsible?

Cecil M. Delinger.

"Answer. That is correct.

"Question. And then in response to a question by Mr. Mullen, I think you said—I think he asked you whether or not any of the United Mine Workers participated in any of the unlawful acts charged against them in this action. Didn't you undertake to say that they did not or you don't know whether they did or not?

"Answer. Not to my knowledge. I was speaking of the United Mine Workers of America, the particular district that we deal with.

"Question. Do you mean to your knowledge they did not or you don't know or not of your own knowledge?

"Answer. I don't know.

"Question. You do not know one way or the other?

"Answer. No.

"And further this deponent saith not."

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page 1108 {

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CECIL M. DELINGER

was called as a witness on behalf of Plaintiff, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Delinger, your name is Cecil M. Delinger?

A. That is right, sir.

Q. How old are you?

A. Forty-nine.

Q. Where do you live?

A. On Floyd Avenue in Richmond, 1822.

Q. Are you employed by Laburnum Construction Corporation?

A. Yes, sir.

page 1109 { Q. In what capacity?

A. Construction Superintendent.

Q. How long have you been with that company?

A. Almost six years.

Cecil M. Delinger.

Q. How long have you been in the construction business with one company or another?

A. Around about 30 years, I guess.

Q. Were you the Superintendent in charge of the Laburnum Construction work on the job site in Breathitt County, Kentucky, in the year 1949?

A. Yes, sir.

Q. Were you the Superintendent in charge of the work when it first was started?

A. No, sir, not when we first started the work.

Q. When did you get there?

A. It was the first part of May, the 9th, I think.

Q. What year?

A. 1949.

Q. I call your attention to a calendar over there, for the month of July, 1949, and I call your attention to July 14, which was Thursday, and ask you if you had a telephone conversation that day with Mr. Bryan regarding a man named William O. Hart?

A. Yes, sir.

Q. Where were you and where was Mr. Bryan?

page 1110 } A. I was at my field office in Breathitt County, and Mr. Bryan was in Richmond.

Q. What was the substance of that conversation?

Colonel Harris: We object to it on the ground that it is hearsay.

Mr. Robertson: It is the same objection which has been made before, Your Honor. He is a subordinate employee, and in the regular course of his business he communicates with the head of the business about the business.

The Court: The objection is overruled.

Colonel Harris: I understood it was a conversation both ways, and the directions that the *alter ego* of the Plaintiff gave him, in particular, are not a report to the head of a business. This conversation was with the head of the business where directions are given to him.

Mr. Robertson: It is admissible either way, Your Honor. It is reports he got or instructions he gave, conducting the business. It is the only way a corporation can conduct its business.

The Court: The objection is overruled.

Colonel Harris: May we add the further objection that it is a self-serving declaration, and reserve an exception; and

Cecil M. Delinger.

may we have the hearsay and the self-serving objection to all this line of questions, and an exception?

The Court: There is no objection to that by counsel?

Mr. Robertson: No.

page 1111 } The Court: It will be considered that you
have objected and reserved an exception.

By Mr. Robertson:

Q. What was the substance of your telephone conversation with Mr. Bryan on Thursday, July 14, 1949?

A. Mr. Bryan said that he had received a call from William O. Hart in Pikeville, Kentucky, and that Mr. Hart had asked him to recognize the United Construction Workers and sign an agreement with them on the work in Kentucky.

Mr. Bryan said that he refused to do that, and asked me if I heard of any such thing out in Kentucky. I told him I hadn't. He asked me if our laborers were organizezd.

The Court: He asked you what?

The Witness: If our common labore:s were organizezd.

I told him I didn't think so. He asked me to check into it, and if they were not, to see if we could get them organized. I told him I would.

By Mr. Robertson:

Q. At that time, had you received any complaint from any of your men, laborers or anybody else, on account of the rate of pay they were getting?

A. No, sir, I had not.

Q. Had you received any complaint from any laborers or any other men you were employing, about work-
page 1112 } ing conditions or dissatisfaction in any way?

A. No, sir, I never did.

Q. Do you recall whether or not you had a telephone conversation with Mr. Bryan on the Friday of the following week, which was July 22, regarding Hart?

A. We had several calls in between that time, but I think on the 22nd—I don't remember whether I called Mr. Bryan or whether he called me. I think I called him and told him I had heard rumors that there would be a gang there to stop us from work the following Monday.

Q. Did you ask Mr. Bryan to come to the job site?

A. Yes, sir, I did.

Q. Why?

A. I thought he would be a help to us. Naturally, being

Cecil M. Delinger.

the head of the company, he would know more about the administrative policies of the company than I would.

Q. Did he agree to come, or not?

Colonel Harris: We object to him leading, if the Court please.

Mr. Robertson: It is not leading, Your Honor. I asked whether he did agree or whether he didn't. I don't know what the witness is going to say any more than Your Honor does.

The Court: I will overrule the objection and allow the question.

page 1113 } The Witness: Yes, I did ask him to come, and he said he had just made a trip out there, and he had other appointments, and it didn't suit him to come back right away.

By Mr. Robertson:

Q. Did he tell you what to do in the meantime?

A. He told me to try to continue on with my work as usual, and if anyone did molest us, not to pay any attention to the United Construction Workers.

Q. Were you at the job site on Monday, July 25?

A. Yes, sir.

Q. Did anybody come to run your men off the job that day?

A. No, sir, there didn't anyone come there to run us off that day.

Q. Did you have occasion to telephone Mr. Bryan that day?

A. Yes. He called me that morning right about noon, and asked if anyone had been there that day to chase us off the job, and I told him we hadn't seen anyone there yet.

Q. Did you call him back later in the day?

A. I called him back that night about 7:30 or 8:00 o'clock.

Q. What was that conversation with him?

A. Soon after we got back to Salyersville that Monday evening, Mr. Henry Starr, from over in Paintsville, called me, and he said that he had been reliably informed that this gang would be there the next morning about noon.

I called Mr. Bryan and told him the message that I had received. I asked him again please to make every effort to come out and be with us when this thing happened.

Q. Why did you do that?

Cecil M. Delinger.

A. I thought since he was President of the concern, I thought it was his place to be there.

Q. Were you scared?

A. I wasn't any too comfortable.

Q. Did Mr. Bryan tell you he would come, or wouldn't come?

A. He said he would make every effort to be there by noon on Tuesday. He told me if Mr. Hart or any of that crowd came, to try to get them to hold off until he could get there and talk with them.

Q. What time did Mr. Bryan actually get there that day, as nearly as you remember, on Tuesday, July 26?

A. I guess it must have been close to 3:00 o'clock in the afternoon when he got there.

Q. In the meantime, had Hart and his men been there?

A. Yes, sir.

Q. How many men would you estimate were with him?

A. I counted 47, and I know that is not all of them. There was more than that.

page 1115 } Q. What sort of crowd was it?

A. Oh, it was a very rough, boisterous crowd. A lot of them looked like they hadn't shaved in a week or two. They had on dirty and in some cases ragged clothing. It reminded me of an outlaw gang like you see in the movies. It was very similar to that type of people.

Q. During that boisterous behavior, did anybody call you any particular kind of son-of-a-bitch that day?

A. No, sir, not that I heard.

Q. If they had, you wouldn't have taken it, would you?

A. There wasn't anything else I could do but take it. There was cursing going on, but I didn't hear any directed at any specific individual.

Q. You didn't hear anybody call you a "big-bellied son-of-a-bitch"?

A. No, sir.

Q. Then was Hart there with these men?

A. Yes, sir.

Q. Did you give him the message that Mr. Bryan had asked you to give him?

A. No, I didn't see Mr. Hart until later on in the afternoon. I mean, I didn't talk with him until later on in the afternoon.

Q. Did you stay up at your office or go down around the tippie while they were down there?

Cecil M. Delinger.

page 1116 } A. Bill Maynard and I left the tippie, I guess, about five minutes after twelve, and there hadn't anyone arrived at that time. We decided we would go get lunch. We didn't think anything would happen until about 12:30 when the men were to resume work. Mr. Maynard wanted me to go on up to the Pond Creek camp with him and have lunch with him, as I had done on a number of occasions. I told him I thought I ought to stay at my office and eat my lunch there.

Q. Did you go back down to the tippie while Hart's crowd were there?

A. No, sir, I didn't.

Q. Why?

A. As I was eating lunch, this gang of cars passed the office. And just as I finished eating and started out the door, Mr. William, our carpenter foreman, who had been on the schoolhouse job, was walking down the road, and he called to me. I stopped and waited until he came up, and he told me about the disturbance they had had at the schoolhouse. We discussed that some, and I started down to the tippie again, then.

When I was about 100 or 150 feet from the office, I could see that the gang was breaking up at the tippie and coming back toward the office, so I waited over there until they came back by the office.

Q. When Mr. Bryan reached the job site, did you report to him what had happened?

page 1117 } A. Yes, sir.

Q. Were you with Mr. Bryan when he met Hart down by the railroad crossing between the field office and the store?

A. Yes, sir.

Q. Did you hear any conversation there between Mr. Bryan and Mr. Hart?

A. I did.

Q. How many people were with Hart?

A. There were three men besides Mr. Hart, four in the group.

Q. Were any of them drunk?

A. Two of them were very drunk. They could walk, but they were right drunk.

Q. State the circumstances under which Mr. Hart and Mr. Bryan had this conversation, and what the conversation was, as you recall it?

A. As we were driving up to the Pond Creek camp, we passed this car with four men in the car. They kind of threw

Cecil M. Delinger.

up their hands, more or less, to say good morning. Mr. Bryan said, "Who are those fellows?" I said I thought it was part of the gang that had been down to the tipple.

We drove on across the tracks, and parked the car and walked back. Mr. Bryan asked if any of those fellows knew where he could get in touch with Mr. Hart. The
page 1118 } fellow sitting in the driver's seat said that he was Hart. Mr. Bryan said he would like to talk with him a few minutes. Mr. Hart said, "O. K.," and all four of them got out of the car and run the glass up and locked the doors.

In the meantime, Mr. Bryan and Mr. Meli and I had stepped about 10 or 15 paces out in front of the car, and all four of these men came over to where we were standing. Mr. Bryan told Mr. Hart that he was sorry that he had stopped his job before he had had a chance to talk to him; and Mr. Bryan said he had tried to call Mr. Hart early that morning in Pikeville, but was told he was out of town; that he had talked with Mr. Hunter and asked Mr. Hunter to give Mr. Hart a message not to interfere with our men until Mr. Bryan could get there and talk to him.

Mr. Hart said he had received that message, but all his arrangements had been made and there wasn't anything he could do about it.

Mr. Bryan asked him why he brought such a large gang of men out to stop our work; and Mr. Hart said that we were working in United Mine Worker territory, and he had come out to take over. He said we had no reason to complain; that he had stopped several other contractors from working in their territory, and he didn't see why we should object.

Mr. Bryan told Hart that all our men were members or had made application for membership in the A.
page 1119 } F. of L. organization, and told him also that we worked A. F. of L. men all over the country, and he thought that since our job was very nearly finished, Mr. Hart should leave us alone and go after some of the contractors that were non-union operators.

Q. What did Hart say to that?

A. I think Mr. Bryan went on to say—no, I think Mr. Hart said that he wasn't interested in that angle of it. He was interested in getting us to sign up with his organization; that he didn't have interests outside of the eastern part of Kentucky; that that was his territory.

Mr. Bryan told him that he intended to have our men back to work the following morning; and Mr. Hart said he didn't

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Cecil M. Delinger.

think they would be there, they would be too God damned afraid to come back. He said, "If they do come back, I will bring in another gang of men and will be damned sure they don't work." He said, "I bet you \$500 right now that you won't ever finish this job unless you do use UCW men."

Mr. Bryan said if he didn't intend to take that line down, he would hold Hart and the United Mine Workers responsible for what had happened that day.

I think that is about all there was to it.

Q. Did Hart say anything about Bryan bucking the United Mine Workers?

A. Yes. He said "couldn't anybody buck the United Mine Workers and get away with it."

Q. Did the conversation get pretty hot, sour, page 1120 } or was everything courteous and pleasant?

A. The only part that was really what I would call a normal conversation was when they first started talking. Both of them were a little hot after that.

Q. Did you go with Mr. Bryan that night to attend a meeting of the Paintsville Local 646, A. F. of L.?

A. Yes, sir.

Q. We have already been over that, so I won't go over that again.

On Tuesday morning when Hart came to the job, did you see any of his men trying to sign up any of your laborers?

A. No, sir, I did not.

Q. Up to the time he came, did you know anything about his trying to organize your laborers?

A. Yes. Before they came there, on July 15, I think, I noticed two men there at the tipple just before noon. They were sitting on a pile of timber we had there. I didn't pay very much attention to them because I just thought they were somebody looking for work or something of that sort.

Bill Maynard and I went up to the Pond Creek camp for lunch, and after we came back I never thought any more about the men. I don't remember seeing them there after I came back from lunch. I guess it must have been an hour or an

hour and a half, maybe, after we went back to page 1121 } work that Mr. Lee Bach, our labor foreman, came to me and said there had been two UCW men there trying to get him and his laborers to sign up with them. He said that these men told them that if they didn't sign up with them, they would lose their jobs.

I told Mr. Bach not to worry about his job; that those fellows didn't have anything to do with it. I said, "When you

Cecil M. Delinger.

hear it from me, you can pay some attention to it." I said, "After all, we pay you. They don't have anything to do with you."

Q. Did he say anything to you about whether or not he wanted to join the A. F. of L.?

A. He said the men had been talking of joining some local, but they weren't right sure what to do about it.

Q. What was making them undecided, according to Mr. Bach?

A. I don't think he stated why that was.

Q. Did he give you the form of application that these United Construction Workers' organizers had given to him?

A. No, sir, he did not.

Q. At that time, did you know whether or not your laborers were either in the A. F. of L. or in the United Construction Workers?

A. I knew that they weren't in the A. F. of L. at that time.

Q. Did you know anything about whether or not they were in the United Construction Workers?

page 1122 } A. I didn't think they were. I couldn't say
for sure whether they were or not. I don't think they were.

Q. Did you at any time on that job tell any laborers or anybody else that they had to join the A. F. of L. in order to keep their jobs?

A. No, sir, I did not. I wasn't that much concerned with it.

Q. Did you try to make them join the A. F. of L.?

A. No, sir, I did not.

Q. Did you try to keep them out of the A. F. of L.

A. No, sir, I did not.

Q. I believe that you went back to the job site with Mr. Bryan on Wednesday morning? That would be July 27.

A. Yes, sir, I went back.

Q. We have been over that pretty thoroughly.

Then did you receive a message from the United Construction Workers through a gentleman engaged in the real estate business in Salyersville?

A. I received a message, but I don't know who it was from.

Q. Who was the man that gave you the message?

A. He was a man down in Salyersville that I had talked to on several occasions.

Q. What was his name?

A. His name was Adams.

Cecil M. Delinger.

page 1123 } Q. What was his business?

A. I am not sure what business he was in.

Q. What was his message?

Colonel Harris: As I understand, we have an objection to all these hearsay conversations.

The Court: That is understood.

Colonel Harris: And an exception.

The Court: That is understood, Colonel Harris.

By Mr. Robertson:

Q. What was his message?

A. I was standing in front of the Carpenter Hotel on this night, and he came up and told me that he would like to talk to me. He said, "Let's walk across the street."

The Court: He told you what?

The Witness: That he would like to talk to me, and for us to walk across the street. I agreed, and we went over in front of the Court House. There were a few benches over there. We sat down on one of those benches. He said, "I have a message for you. I am afraid to give it to you, and I am afraid not to give it to you. I am caught in the middle, through no efforts of mine. If I do tell you, I want you to treat it in the strictest confidence; and if you ever use my name in connection with it, I will deny the whole thing."

Finally he said that he had been asked to tell me that if I wanted to get out of Kentucky alive and in good health, to get the hell out of there before Sunday; not to go back in Breathitt County after Sunday.

By Mr. Robertson:

Q. You didn't take that very seriously, did you?

A. I said, "Who gave you that message?"

He said, "I can't tell you. My life wouldn't be worth any more than yours if I told you that."

I said, "What would you do about it?"

He said, "I would do exactly what they said to do. What are you going to do about it?"

I said, "I don't think I will even be here Sunday." (Laughter.)

He said, "That's using your head."

Q. Do you remember what day it was that you had that talk with that man, what day of the week?

Cecil M. Delinger.

A. That was Wednesday night, I think it was, the night of the 27th.

Q. Were you living in Salyersville at that time?

A. Yes, sir. I lived in the hotel there, yes, sir.

Q. Did you telephone Mr. Bryan the next day over in Huntington regarding that message?

A. The next morning, Mr. Ragan and I went back out to the job. He had some pay checks that hadn't been taken up the day before, and he thought someone might be out there after them. We got back to town about 11:00 or page 1125 } 11:30, I guess.

I was standing in front of the hotel, and Mr. Freeman, A. F. of L. representative, came by and saw me, and parked his car and came back, and we had a general discussion of what had taken place. I told him Mr. Bryan had been wanting to talk with him, and he said he would like to talk with Mr. Bryan. So we walked up to the telephone exchange. I called Mr. Bryan in Huntington, and turned the phone over then to Mr. Freeman. Weaver Freeman is his name.

During their conversation, Mr. Freeman told him of the message I had received. Then Mr. Bryan asked him to put me back on the phone; that he would like to talk to me. He asked if that was true, and I told him it was. He wanted to know what I was going to do. I said, "I would like to be relieved here and get back to a little bit more civilized part of the country."

He said, "Go ahead and make arrangements, and report back to the Richmond office."

Q. Did you stay around until after Sunday, or did you leave before Sunday?

A. Friday morning, Mr. Ragan and I went back out to the job. I had a few personal things out there. I picked them up, and we came on back, and I left Friday afternoon.

Q. Were you scared?

A. Well, a fellow sort of hates to admit he page 1126 } was scared, but I made up my mind that I would get away from out there. I didn't see any use in making a fool of yourself.

Q. Did you think it necessary for you to go back to the meeting at Salyersville the next week, on the 2nd of August?

A. I didn't know anything about that meeting until after it was over with.

Q. Have you ever been out to the job site since you left that Friday?

Cecil M. Delinger.

A. No, sir.

Q. Are you going back?

A. If they gave me a coal mine out there and I had to go out there and run it, I would tell them to keep the damned thing; that I didn't want it.

Q. When you first got there, what sort of road did they have from Salyersville over to the job site?

A. They didn't have hardly any road. About 6 or 7 miles you had to drive right up the creek bed and run right in the water. That was the only way you could get up there. From there on in, it was just a very little, narrow road that our bulldozers had plowed out of the side of the mountain, which was just wide enough for one car or one truck, except at a few places where we had it wide enough where you could pull in to pass each other.

Q. You have been on construction work for 30 years, haven't you?

page 1127 } A. Yes, sir.

Q. Was that about like the other jobs you have been on, or do you think it rougher?

A. As far as the personnel is concerned, it is about as rough as one as I have ever had, and I have been on work in foreign countries as well as in the United States.

Q. I think this will finish up what I want to ask you:

After your telephone talk with Mr. Bryan on the 14th of July, which was that Thursday, what, if anything, did you do about getting the laborers or anybody else into the A. F. of L.?

A. That afternoon, if I remember correctly, just before noon when I talked to Mr. Bryan—naturally, since I had charge of the construction work, I had to travel all over and cover the whole area—that afternoon I went to the top of the mountain, which was about four miles by road from our office, and talked to Mr. Sublett. He was president of the Carpenters Local in Paintsville. I told him about my conversation with Mr. Bryan, and suggested to him that he try to get the laborers to organize. He said that he would.

Q. In your talk with any of those laborers, did any of them express themselves about that Laburnum job and the treatment they were getting from Laburnum, whether it was good or bad?

A. Yes, sir. After they started running coal
page 1128 } over the tippie—when they started, I should say,
when they started running the coal, Bill Maynard, who was tippie foreman for the Pond Creek people, had

Cecil M. Delinger.

talked to me and said there were a few of our laborers there that he would like to have transferred over to him for the purpose of using them on the tippie operation. Our labor foreman, and I think it was five or maybe six laborers, transferred over with the Pond Creek Company. The foreman and each of those laborers came to me and told me what they were doing, and more or less apologizing for their action. I told them that I thought it was the thing for them to do, since they were given permanent work, and that was more than I could offer *the*. Each and every one of them told me that they had enjoyed working for us, and hoped we didn't have any hard feelings toward them for going to work for the Coal Company.

I told them, "No," I understood the conditions, and we had no hard feelings at all. I said, "I hate to lose you boys. You are right good men."

But every one of them was very much concerned as to how we would feel about them transferring away from us.

Q. At any time that Hart was out there on the job, do you know anything about a strike, other than those picket signs that they put up out there? Did any of the men report to you that any of your people were striking?

A. No, sir, we never had any strike.

page 1129 } Mr. Robertson: The witness is with you.

CROSS EXAMINATION.

By Colonel Harris:

Q. What effort had you made to look after getting the laborers and the carpenter helpers into a union before Mr. Bryan called you up on the 14th day of July?

A. What efforts had I made, you say?

Q. Yes.

A. I hadn't made any efforts. It was no concern of mine. I had no reason to make any efforts.

Q. But Mr. Bryan told you to get busy and see if you couldn't get those laborers and helpers into an A. F. of L. union, didn't he?

A. He asked me to see if we could get them organized.

Q. To see if you couldn't get them organized.

At that time, Mr. Bryan told you in that telephone conversation that he didn't like the United Construction Workers,

Cecil M. Delinger.

and he was not going to deal with them, and he never would deal with them, didn't he?

A. No, sir, he did not.

Q. Did he say anything at all about the United Construction Workers?

A. He said that Mr. Hart had told him that he wanted Mr. Bryan to sign up with him. Mr. Bryan told me in that telephone conversation that he had told Mr. Hart page 1130 { that he had agreements with the Richmond Building and Construction Trades Council and with other A. F. of L. unions, and that he didn't think that he could sign up with him, due to the fact that these other agreements were still binding.

Q. But the Carpenters' helpers and laborers were not getting any benefit from your contract with the A. F. of L., were they?

A. They were getting the union scale,—

Q. They were getting 90 cents an hour, weren't they?

Mr. Robertson: I don't think he had finished. Let him finish, please.

The Witness: They were getting 90 cents an hour, which was recognized through verbal, I think verbal agreement that that would be the recognized scale. That was a lot more money than they had ever got out there before.

By Colonel Harris:

Q. The United Construction Workers' scale for those same men was \$1.36 an hour, wasn't it?

A. I heard that that was it. I never saw anybody paid \$1.36 an hour.

Q. Most of your testimony has been on things you heard, and you heard that these laborers, if they joined the UCW, would be on a \$1.36 an hour scale?

A. I heard Mr. Hart tell Mr. Bryan that. That is all I know about that scale.

Q. After your boss told you to see if you page 1131 { couldn't get the laborers into the A. F. of L., did you try to do it, or did you just sit still and let time pass by?

A. I stated a few minutes ago, I went up on top of the mountain and made the suggestion to Mr. Sublett, the president of the Carpenters Local.

Q. Do you know a man named Poe?

A. Yes, sir.

Cecil M. Delinger.

Q. Did he work for the Laburnum Construction Company?

A. Yes, sir.

Q. How long was it after you hung up the telephone before you talked to Mr. Poe?

A. If I talked to Mr. Poe at all, it was sometime that afternoon.

Q. Didn't you give Mr. Poe time off, with pay, so that he could go out and try to get laborers and carpenters' helpers into the A. F. of L.?

A. That was several days after the telephone conversation.

Q. How many days off did you give Mr. Poe to try to get the laborers and carpenters' helpers signed up with the A. F. of L.?

A. I guess Mr. Poe was maybe an hour or an hour and a half at the most.

Q. Were you there when the applications for the A. F. of L. membership were all dated? Was that done in your presence?

page 1132 } A. No, sir.

Q. Were you there when somebody filled out, except one application, somebody filled out the others?

A. I don't know who filled them out. I didn't see any of that. I couldn't say who filled them out.

Q. You never saw any laborer fill them out, did you?

A. No, sir, I can't say that I did. I saw Mr. Poe approach these various laborers and talk with them, but I didn't stand right there and see them sign any applications.

Q. When you talked to this man Adams, you can't tell this jury of your own knowledge whether or not a United Construction Worker asked him to deliver you a message, can you?

A. I can't truthfully say that he did, no, sir. I don't know who asked him to.

Q. All you have is the hearsay report of a man named Adams, what Adams told you?

A. That is right.

Q. Is Mr. Adams still alive?

A. I don't know. I haven't seen or heard of him since I left out there.

Q. Had you been particularly friendly with Mr. Adams before that?

A. No. I had talked with him on several different occasions there on the streets or in the restaurant there in Salyersville.

Cecil M. Delinger.

page 1133 } Q. Do you know of any reason, had you done
him any favor so that he would be willing to risk
his life in your hands?

A. I don't think that I ever did, but nevertheless, if one of
those guys told him to deliver that message, he would deliver
it, whether he thought that much of me or not.

Colonel Harris: We move to exclude that statement. That
is an argument from the witness, if the Court pleases, and
not responsible to our question.

Mr. Robertson: The gentleman talks a lot about "why"
here. He asked him, in effect, "Why?" The witness is tell-
ing him why. It is circumstantial evidence which the jury
can believe or disbelieve, as to whether this man's life was
threatened and who threatened it.

Colonel Harris: No. I asked him, as I recall, if he ever
did this man any favor so that this man would risk his life
in his hands. That was the question. He either did him a
favor or he didn't. And then he proceeds to make a speech
for his employer.

Mr. Robertson: I object to that gratuitous comment, Your
Honor. The witness has heretofore testified that Adams was
scared to deliver the message and scared not to deliver it,
and said he was caught in the middle. Now he has asked him
why, and the witness has a right to tell him why.

Colonel Harris: If the Court is in any doubt
page 1134 } about what my question was, I would like to have
it read.

The Court: Read the question and answer.

(The last question and answer were read by the reporter.)

Colonel Harris: The latter part of the answer neverthe-
less, I think, is not responsive to our question.

The Court: The motion is granted.

Gentlemen, disregard the latter part of his answer as not
responsive to the question.

page 1135 } By Colonel Harris:

Q. Have you helped Mr. Bryan to prepare this
case for trial?

A. The only help, if you could term it such—

The Court: Talk a little louder, please.

The Witness: The only help, if you could term it as such,

Cecil M. Delinger.

was that he questioned me as to what had happened out there, and from memory I went over the case with him.

By Colonel Harris:

Q. Did you and he discuss what witnesses you could use in this trial?

A. No, sir; we did not.

Q. As superintendent, rather as an employee—

Mr. Robertson: No, as superintendent. That is what he was.

By Colonel Harris:

Q. Are you still superintendent, because I am talking about within recent months?

A. Yes, sir.

Q. All right. Have you made any effort whatsoever to find out if the man Adams is still alive or made any effort to get him here as a witness in this case?

A. No, I have not.

Q. You stated that since your job was very near finished—

Will you tell the jury how near finished each page 1136 } one of those jobs was, in your judgment, as superintendent of construction.

A. I would say offhand, as a whole, the job was about 80 to 85 per cent complete.

Q. That is the average for all of them, taking the average. Some of them were more than 85, weren't they?

A. Yes, sir.

Q. Some of them were 95?

A. Yes, sir.

Q. Were there any of those jobs on which the Laburnum Construction Company had been fully and completely paid?

A. I am sorry, I can't answer that question. I don't know the answer to it.

Q. You don't have anything to do with the bookkeeping?

A. No, sir.

Q. That isn't under your supervision at all?

A. No, sir.

Q. One question, and then I am through, I think. Those roads leading up to the job site were in such condition that they would be impassable for the ordinary low-slung passenger car, were they not?

A. At what particular time are you referring now?

Maynard C. Ragan.

Q. Before you all smoothed them out in your operation up there.

A. When the operation first started there page 1137 } wasn't hardly any roads at all, but at the time this trouble happened there were very good roads. You could drive 30 or 40 miles all the way right to the job, thirty or forty miles an hour, I mean.

Q. But the roads generally in that country were in pretty bad condition, weren't they, when you first went there?

A. When we first went there, yes.

Q. The only ones that you repaired and fixed up were the ones that the men had to use in coming from the job and coming from home to the job site and back, is that right?

A. You mean when we first started work?

Q. Yes.

A. Yes.

Q. How many roads were there that you would say you repaired?

A. There is only one that I know of. We didn't repair that. Pond Creek people did that. The coal company people did that.

Q. You don't know of them repairing but one?

A. No. That is the only one I traveled on.

Mr. Robertson: Let him finish, please, Mr. Harris.

The Witness: No, sir; I don't know about any others.

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page 1138 }

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MAYNARD C. RAGAN

called as a witness for Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Ragan, your name is Maynard C. Ragan?

A. Yes, sir.

Q. Speak loud enough for all these gentlemen to hear you, please.

How old are you?

Maynard C. Ragan.

A. 30 years old.

Q. Where do you live?

A. I live in Sandston, Virginia right now.

Q. Are you employed by Laburnum Construction Corporation?

A. Yes, sir.

Q. In what capacity?

A. Chief clerk.

Q. Were you employed by them as chief clerk at their Breathitt County, Kentucky job site in July, 1949?

A. Yes, sir.

Q. How long have you been with Laburnum?

A. I have been with Laburnum almost five years now.

Q. Before that time where did you work and page 1139 } what kind of work did you do?

A. My biggest job prior to that time was at the Solvay Process Plant in Detroit, Michigan as chief clerk. We handled all the administrative affairs of the project.

Q. Where were you born and raised?

A. I was born and raised in Charleston, South Carolina.

Q. What were your duties generally as chief clerk on the job site in Breathitt County, Kentucky?

A. Administrative assistant to the superintendent, paymaster, personnel director. I managed the mess hall and camp facilities. I prepared payrolls and computed taxes and insurance in connection with the payrolls. I received, inspected and expedited and purchased materials and supplies. I guess that about covers most of it.

Q. Did you pay the men off?

A. Yes, sir.

Q. Did you hear—I am just trying to find out whether you did or whether you didn't—any part of a telephone conversation between Mr. Delinger and Mr. Bryan on Thursday, July 14, 1949?

A. Yes, sir; I did. I don't recall the exact words, but I knew later on from Mr. Delinger that Mr. Bryan had called him about a call from Mr. William Hart, in Pikesville.

Q. I don't want you to tell about that now. I page 1140 } just want to know if that conversation came to your attention.

A. Yes, sir.

Q. By what Mr. Delinger told you afterwards?

A. Yes, sir.

Q. But you didn't actually hear it while it was being made?

Maynard C. Ragan.

A. I heard the call, yes, sir, but I can't describe any of the language that was used or anything in connection with the call.

Q. Personally did you hear any part of a call that Delinger made to Mr. Bryan on the following Friday, July 22?

A. No, sir. Mr. Delinger called Mr. Bryan on that day, but I believe he called from the Hotel Carpenter in Salyersville and I didn't hear it.

Q. Did you personally hear any call from Mr. Delinger to Mr. Bryan on the 25th of July, which was Monday, about Mr. Bryan coming out there, or was that told to you later?

A. That was told to me later.

Q. When was the first you knew yourself about any report of this man Hart and a crowd coming there to run the men off the work?

A. The first I heard of it was from Mr. Delinger, about Hart's conversation with Mr. Bryan. After that I heard rumors all the way up to the time that they actually came in there.

Q. Were you at the job site when they came page 1141 } in there on Tuesday, July 26th?

A. Yes, sir; I was there.

Q. We have been into that pretty thoroughly.

About what time did Mr. Bryan get there that day?

A. Mr. Bryan arrived there about three o'clock.

Q. Did you, together with Mr. Delinger, report to him what had happened there that day when Hart and his men came there?

A. Yes, sir. I knew that Mr. Bryan was anxious to get in touch with Hart, so I asked Hart to wait to talk to Mr. Bryan.

Q. Were you present that afternoon of July 26 when Bryan and Delinger met Hart at the railroad crossing and Bryan and Hart had that talk?

A. No, sir; I wasn't there. I was working in the office at that time.

Q. Did you go to the Paintsville Local Union meeting that night, July 26?

A. No, sir; I didn't attend that meeting.

Q. At any time out there on the job did you have anything to do with arranging or helping laborers or anybody else to join any union?

A. No, sir. I had no part at all in that.

Q. Through that Tuesday, July 26, did you know whether or not the laborers at that time were organized?

Maynard C. Ragan.

page 1142 } A. They had signed applications with the A. F.
of L. carpenters local in Salyersville, Kentucky
to become carpenters' helpers.

Q. How do you know that?

A. I saw the application blanks after they had been filled in and signed by the laborers.

Q. Did those application blanks come into your possession?

A. Yes, sir; they did.

Q. Do you remember when?

A. No, sir; I can't recall the exact date right now.

Q. Do you remember how you happened to get them?

A. I asked Robert Poe if he would let me see them and let me have them, and he did that, so I sent them to Mr. Bryan in Richmond.

Q. I hand you 16 applications and ask you if you can tell by looking at them whether or not they are the ones that Poe gave you and that you forwarded to Bryan. Look at them closely enough to tell (documents handed to the witness).

A. Yes, sir; these are the applications that I had.

Mr. Robertson: The applications to which I refer are those which have been introduced as Plaintiff's Exhibit 57, sub-numbered 1 through 16, both inclusive.

page 1143 } By Mr. Robertson:

Q. Were you present when Poe got any of those applications?

A. No, sir; I wasn't present when the laborers were being signed.

Q. Did you furnish Poe with any of the application forms or know where he got them?

A. No, sir. I know where he got them but I didn't furnish them. He got them from Mr. Frank Dixon, an international representative of the A. F. of L. in the State of Kentucky.

Q. On July 26 or at any other time do you know whether or not any of your laborers were on strike?

A. No, sir. We had no labor troubles at all prior to that time.

Q. In the performance of your duties as chief clerk, including paying the men off, did you ever receive any complaints from the common laborers or anyone else about the rates of pay?

A. No, sir; I didn't receive any complaints and didn't hear of any complaints.

Maynard C. Ragan.

Q. Did any of the laborers ever tell you that they wanted to join the United Construction Workers?

A. No, sir; they never volunteered that information to me.

Q. Did you ever try to make any of them join page 1144 } the A. F. of L.?

A. No, sir; not at all. That was entirely their choice.

Q. At any time while you were at the job site did any of the laborers state to you that they would like to join the A. F. of L. before the United Construction Workers put the heat on them?

A. Yes, sir. Lee Bach and Dan Combs are two in particular that I mentioned that were very anxious to become members of the Salyersville Local.

Q. At the job site on July 26 did you have any talk with this man Hart about Tom Raney?

A. Yes, sir; I certainly did. I went down to the tippie a little before they were supposed to resume work at 12:30, and asked to see Hart. I asked some of our men to point him out to me. So I found Hart and I said, "Hart, what in the hell is the meaning of your coming in here with this group of men trying to stop our work?"

He said, "We are taking over."

I said "Under whose authority are you taking such a step"?

He said, "I am under orders from Mr. Tom Raney of Pikeville, Kentucky, and over him is Mr. A. D. Lewis, whose office is in Washington, D. C."

Mr. Robertson: The witness is with you.

page 1145 } CROSS EXAMINATION.

By Mr. Harris:

Q. Are you a member of the Salyersville Local Union?

A. No, sir. I am not.

Q. Were you a member then of the Salyersville Local Union?

A. No, sir. I have never had any connections with any labor organization.

Q. Had you been in the habit of getting applications for membership in the Salyersville Local Union?

A. No, sir; I had no interest in that at all.

Q. Who asked you to get those application blanks from Mr. Poe?

A. Mr. Bryan asked me to get them from Mr. Poe.

Q. Mr. Bryan?

Maynard C. Ragan.

A. Yes, sir.

Q. Do you recall what day of the week and what date of the month it was that Mr. Bryan asked you to get those application blanks from Mr. Poe?

A. No, sir; I can't recall the date. It was in July. I don't know the exact date at all.

Q. Did he ask you in a conversation face to face or did he ask you over long distance?

A. I believe it was over long distance.

Q. Did he call anybody else, or was the call to page 1146 } you and you alone?

A. I don't remember if that call was directed to me or to Mr. Delinger, and right now I would like to say I don't remember whether Mr. Bryan or Mr. Delinger asked me to get those applications.

The Court: Face the jury, please.

Mr. Allen: Repeat your answer, please.

The Witness: I would like to say right now that I don't know whether the request came from Mr. Bryan or Mr. Delinger and I also would like to say I don't know whether Mr. Bryan or Mr. Delinger actually asked me to get those application blanks.

By Colonel Harris:

Q. That was the first and only time in your life that you ever participated in union work and got application blanks, wasn't it?

A. I am trying to recall. I believe it was.

Q. Do you tell this jury that on the only occasion that you ever did anything like that, your memory is such that you don't know whether Mr. Bryan asked you to do it or whether Mr. Delinger asked you to do it or whether neither one of them asked you to do it?

Mr. Robertson: I object to that, Your Honor. He said one or the other did ask him to do it. It is not fair to the witness to twist it around the other way.

The Court: If that was his answer, the witness page 1147 } is on cross-examination and you may proceed along that line on redirect.

Colonel Harris: Will you read the question to him, Mr. Dudley.

The Witness: I placed no particular importance on that. As I recollect, that was the first job I was ever on that all the crafts weren't organized.

Maynard C. Ragan.

By Colonel Harris:

Q. My question was—and you haven't answered it—do you tell this jury that you don't know on that single solitary occasion whether Mr. Delinger asked you to do it, whether Mr. Bryan asked you to do it, or whether neither one of them asked you to do it? You haven't answered that question.

A. To me it was just a routine thing. I didn't place any particular importance on that. Am I supposed to remember everything that ever happened on the job?

Q. You are supposed to answer the question that I asked you.

A. I answered—

The Court: You are positive that either one of those two gentlemen asked you to do it?

The Witness: Yes, sir.

The Court: That is what you were trying to
page 1149 } get at?

Colonel Harris: Yes.

By Colonel Harris:

Q. I understood you to say on your direct examination that before the application blanks were turned in to you, you knew where Poe got the blanks.

A. Certainly I knew where he got the blanks.

Q. Did you see him get them?

A. I didn't actually see anybody of the laborers sign the blanks, but I knew where they had come from. I knew that the men had signed them. Some of them told me they were glad to be in the A. F. of L.

Q. I am not asking you anything about what the men said. I am asking you if you knew where Poe got the blanks.

A. You mean before they were signed or after?

Q. Before they were signed, where did Poe get the blanks?

A. He got the blanks from Mr. Frank Dixon.

Q. How do you know he got them from Mr. Frank Dixon?

A. Because Poe told me so.

Q. When did Poe tell you that he got them from Frank Dixon?

A. It was within the first hour after we started work, I believe it was about July 20. It was early one morning he told me that he had obtained the blanks from Mr. Dixon.

Q. Don't you know that in order to get those
page 1149 } blanks you had to send off to Louisville to get them?

Maynard C. Ragan.

A. No, he didn't have to do that.

Q. All right. What day was payday on that job?

A. Wednesday.

Q. Poe was an employee of the Laburnum Construction Company, wasn't he?

A. Yes, sir.

Q. Was he also an officer of the union?

A. Yes, sir—I am not positive. I think he was an officer in the Salyersville local.

Q. How long had Mr. Poe been an employee of the Laburnum Construction Company?

A. I don't know. You would have to refer to the employment records to find that.

Q. Did Lee Bach and Dan Combs come to you and solicit your help in getting in as members of the Salyersville local?

A. No, sir.

Q. You took no part personally in getting them in to that local, did you?

A. No, sir. It was no affair of mine.

Q. But it was an affair of yours after the 14th day of July, 1949, to get those laborers and carpenters, helpers in?

A. It was no affair of mine then.

Q. Did you have anything to do with helping Mr. Poe get the application blanks?
page 1150 } A. No, sir; nothing at all.

Q. Have you ever had possession of the application blanks?

A. When I was transmitting them to Mr. Bryan after they had been filled out and signed.

Q. From whom did you get them?

A. From Mr. Robert Poe.

Q. Do you recall the date you got them?

A. No, sir; I can't recall the exact date.

Q. Do you recall the day of the week you got them?

A. No, sir; I can't recall that.

Q. Did you see Poe or anybody else fill out all those applications except one?

A. No, sir. I saw no signing and no filling out and no talking to or anything in connection with the application blanks.

Q. When you got them they were in the same condition that they are now?

A. Exactly.

Colonel Harris: That is all.

Maynard C. Ragan.

Mr. Robertson: Stand aside.

(Witness excused.)

Mr. Robertson: If Your Honor please, we have reached the point that it is necessary to take up several matters with the Court in chambers. I don't want to mislead you. page 1151 } I think it probably will take several hours. It might not.

The Court: What do you mean by several?

Mr. Robertson: I would say two or three, but just if they agree with everything it will take but five minutes.

Colonel Harris: I can't conceive of anybody agreeing with everything that Mr. Robertson would ask.

Mr. Robertson: I know you never will, my friend.

The Court: What do you think of excusing the jury until tomorrow morning, then?

Mr. Robertson: I think you might as well do it, Your Honor.

The Court: I expect so, gentlemen. You gentlemen have an opportunity to attend to some of your business affairs this afternoon. We will adjourn then until tomorrow morning at ten o'clock.

(Whereupon, at 12:30 o'clock p. m. the jury was excused.)

page 1152 } (The following proceedings were had in Chambers:)

Mr. Lowden: On Monday morning we had Mr. Joinville who was summoned in your Court as a witness for the Defendant up in the court upstairs, and when we got through you were in session. I undertook to tell him that I didn't think we would need him that day and I was to find out from you when you wanted him to come back. I don't think I had authority to do that.

The Court: He was recognized to be back as a witness for you gentlemen, wasn't he?

Mr. Mullen: Yes. He reported and I told him we were not going to call him that day.

Mr. Lowden: He said if we would let him know when we wanted him he will be available.

The Court: All right, sir.

Mr. Lowden: Do you think it will be this week? I think he is going to be tied up on Friday all day in another court.

The Court: If he will be available we will let him know when to appear.

Mr. Robertson, what was this conference called for? I just

want to get a bird's eye view of it and we will come back after lunch.

Mr. Robertson: I will tell you what it is and what our position is. We are at the point now where we page 1153 } think it is necessary to have the ruling of the Court on these various interrogatories. We have looked up the law and we are prepared to argue the law. Our position is going to be this—

The Court: I didn't want to rush you. I don't see Mr. Allen here. Do you want to wait for him?

Mr. Robertson: I have already talked to him.

The Court: All right, go ahead.

Mr. Robertson: Our position is that we are going to offer in evidence all of the interrogatories. We then think under the law, which we would like to argue after lunch, it becomes necessary for the Court to determine which interrogatories are relevant and which are not relevant. Then we think that under the law all relevant interrogatories and answers may be read in evidence, but we think the law is that the Court one by one determine which ones are relevant; then of those that are determined by the Court to be relevant, that the Plaintiff read in such as they want and the Defendant read in such as they want.

I am not going into the argument now, but I am going to ask Mr. Moore to make the argument and then Mr. Allen to close it for our side.

The reason we think, putting it in a nutshell, that our position is correct is that if it were not correct you would find yourself in this situation: That Laburnum an- page 1154 } swered a whole lot of interrogatories. They said a lot of them were self-serving declarations, hearsay, irrelevant, prejudicial, *everything* I can think of, and therefore they are not properly in the case. If our position is not right, if the position they took in here last week is right, under that statute, you would have to read all of that to the jury, which just can not be the law. If it was the law, so far as all that irrelevant stuff, they would be at our mercy. We could offer them all in and get stuff before the jury and into this case which we have no more right to put in here than we have to put in something here about the law of nations or something.

What we think is going to be necessary here—and that is why I said I thought this phase of the case was going to take several hours—is that the Court would want to hear argument on what the law is, and then if the Court thinks we are correct on it, as I think it will, I don't see any escape from our going through here and the Court's determining which ones are relevant and which ones are irrelevant. There is a whole mass of

them here that I would think everybody would admit were irrelevant. Frankly, I think what Mr. Pellard had in mind last week was to force us to read a book of stuff that would bore and irritate the jury beyond endurance. I don't think that the Court is going to rule that all that irrelevant stuff has to be read to the jury.

Mr. Mullen: Our position, Your Honor, is page 1155 } this: In the first place, he is referring to the interrogatories that we addressed to them and to which they made self-service answers. They have nothing to do with them. If we choose to put them in, we put them in. If we don't choose to put them in, they can't touch them. The same thing applies to the ones they addressed to us. We can't put them in, but our position is if they put them in, they must put in the entire interrogatory and read it to the jury. They can't put it in as an exhibit. We have cases to support that.

As to the relevancy, it is rather strange that they want to raise the question of the relevancy of their own interrogatories.

Mr. Robertson: We are willing for you to do whatever you want with ours, put them in or leave them out, read them or not read them.

Mr. Mullen: I am not talking about yours. I am talking about the ones you addressed to us. It is a very curious idea that you, who addressed them, are raising the question of relevancy. We could raise the question of relevancy. It is rather strange that the party that addressed the interrogatories to the other party now, in order to get out of the hole they are in, want to raise the question of relevancy.

Mr. Robertson: We are not in any hole. I think it is the duty of the Court to run the law case according page 1156 } to the law.

Mr. Mullen: So do I. I agree with you entirely.

The Court: Gentlemen, we will recess then until 2:15.

Colonel Harris: Here is that order you asked for.

Mr. Allen: Judge, may I say this: 2:15 is ample time, but there is a set of depositions and the question is coming up here as to whether certain depositions are admissible and whether they are not. In order to determine that question in my own mind, I would like to have just enough time to read those depositions. I think we can get through anyway with all our stuff this afternoon, can't we, Mr. Robertson?

Mr. Robertson: I don't know. It depends on how long it takes you to read them. I thought you had read them once.

Mr. Allen: No. I think I can read the depositions in 30 minutes. I want to be careful about it, Judge. I don't want to leave out any depositions that we are entitled to. I don't

want to offer any that I think are inadmissible, and if any parts of them are inadmissible I want to be in a position to say frankly that they are.

The Court: You would want additional time?

Mr. Allen: Probably 30 minutes additional time to read those depositions.

page 1157 } The Court: I wonder if we could make it 2:30 instead of 2:15.

Mr. Allen: 2:30 will be all right.

Mr. Mullen: As to what depositions are you going to raise the question?

Mr. Allen: I am not raising any question as to them. I am talking about depositions that we have not offered, that we are proposing to offer, that I want to study carefully with a view of determining their admissibility.

Mr. Mullen: Oh.

The Court: I wonder if you couldn't read those tonight and take it up tomorrow.

Mr. Allen: I can do that, certainly.

The Court: I think that would be better.

Mr. Robertson: I think we ought to keep this thing moving.

Mr. Allen: That will be all right.

The Court: Then we will meet at 2:15.

Mr. Mullen: Then in the morning you are going to state what depositions you want to offer?

Mr. Robertson: I don't know whether I am or not. I am going to meet each problem as it comes up and not commit myself in advance.

The Court: In other words, we will pass on the depositions when he raises the question.

page 1158 } Mr. Mullen: There are depositions that we will object to any part of.

The Court: Will you gentlemen ask for this order, Mr. Mullen? I filed several days ago the two affidavits that Mr. Pollard lodged with the Court. I entered an order filing those affidavits. I just want to tell you that.

Do you gentlemen want to endorse this order, Mr. Robertson? That is filing the motion for mistrial, which was made January 29.

Colonel Harris: I dated it the 29th.

The Court: The order will be entered filing the motion as of that day.

We will recess until 2:15.

(Whereupon, at 12:50 o'clock p. m. a recess was taken until 2:15 o'clock p. m. the same day.)

(End of Volume II.)

INDEX TO RECORD

	Page
Writ of Error and <i>Supersedeas</i> Awarded	1
Record	2
Notice of Motion for Judgment	2, 491
Exhibit "A"	12
Exhibit "B"	18
Exhibit "C"	19
Plea of Not Guilty	19, 20
Order, Grounds of Defense	21
Interrogatories to Plaintiff	21
Order—Extending Time to Answer Interrogatories	25
Answer of Plaintiff to Interrogatories	25
Agreement, Construction October 28, 1948	39
Statement, Cost of Work	44
Agreement, Construction December 15, 1948	46
Statement, Cost of Work	51, 58
Agreement, Construction December 8, 1948	53
Specifications, Constructing Telephone Line	60
Contract, December 14, 1948	61
Answer—Plaintiff to Interrogatories	63
Order, Date for Filing Grounds of Defense and Defendant's Answer Interrogatories	71
Answer, Plaintiff to Interrogatories	71, 104
Objections, Grounds of, Defendant to Interrogatories	73
Grounds of Defense	74
Objections, Grounds of, Defendant to Interrogatories	82, 83, 84
Motion Amended to Consolidate Cases	85
Order on Interrogatories	86
Motion for Order Allowing Defendants to Amend Grounds of Defense	102
Order to Amend Grounds of Defense	103
Letters—Island Creek Coal Co. to Plaintiff	113, 114
Letters—Plaintiff to Island Creek Coal Co.	115
Order to File Affidavit of Fred G. Pollard	116, 117
Affidavit of Fred G. Pollard	117, 118
Order to File Amended Answer to Plaintiff's Interrogatories	119
Answer, Amended, to Plaintiff's Interrogatory 83	120
Answer, Amended, to Plaintiff's Interrogatory 85	120
Order to File Motion for Mistrial	121
Motion for Mistrial	122

	Page
Stipulation February 12, 1951	129
Verdict and Motions to Withhold Judgment	147, 1886
Motion to Set Verdict Aside	147, 1889
Motion to Set Verdict Aside and Grant New Trial	148, 1889
Motion to Dismiss Motion for Judgment	151
Judgment for Plaintiff	152
Notice of Appeal and Assignments of Error	154
Transcript of Proceedings, Volume 1	423
Proceedings	423
Opening Statement of Mr. Archibald G. Robertson	426
Depositions of Raymond E. Salvati, and Hiram L. Smith read to the jury	1429
Deposition of Nelson Baldrige read to jury	1485
Motion for mistrial (newspaper editorial)	1599, 1606
Proceedings held in chambers	180, 422, 474, 491, 533, 550, 563, 577, 615, 621, 642, 646, 675, 681, 687, 1049, 1491, 1522, 1539, 1687, 1813, 1849
Stipulation of counsel	1817
Court instructs jury	1818
Oral argument of counsel:	
George E. Allen, in behalf of plaintiff	1827
Crampton Harris, in behalf of defendants	1839
James Mullen, in behalf of defendants	1851
Archibald G. Robertson, in behalf of plaintiff	1868
Verdict of the jury	1886
 Witnesses—Plaintiff	
Alexander Hamilton Bryan	455, 482, 510, 565, 688, 694, 715, 789, 1168, 1230, 1453, 1504
Harry Evans Cassidy	691, 696
C. Howard Holt	765
Frank Dixon	807
Weaver P. Freeman	831
Henry Starr	837
Bert Preston, Sr.	858
Willard P. Owens	899
Jack Hackworth Jr.	900
Norman Hackworth	911
Robert Hackworth	921
Jack Patrick	929
C. H. Patrick	939

Index to Record.

iii

	Page
Chester Trimble	947
Paris Trimble	961
Monroe F. Sublett	966, 1501
Lonnie Dixon	971
Estle Robinson	974
Otto Preston	976
Le Grand Mayo	981
Raymond E. Salvati	996
Cecil M. Delinger	1020
Maynard C. Ragan	1037, 1503
Hugh H. Baird, Jr.	1512
T. Coleman Andrews	1532

Witnesses—Defendants

Homer Howard	1236
Murvel C. Caudill	1241
Allen Young Watkins	1243
Prock Jackson	1248
William Orbin Hart	2154
Harvey J. Robinson	1303
Grant Davis	1316
Harrison Daniels	1325
Linden Higgins	1336
John McClellan	1343
John T. Arnett	1348
Robert R. Fohl, Jr.	1361, 1383
Oscar Wiseman	1385
James H. Salyer	1389
Lee Allen	1392
Lee Bach	1395
Burl King	1404
Ernest Howard	1409
Jerry Barnett	1415
Jasper Newton Cundiff	1442
C. Howard Holt	1444
Thomas Estil Raney	1454

Index to Plaintiffs' Exhibits: (As Introduced)

P-1 Copy of Constitution of International Union Mine Workers of America (October 11, 1948) . . .	454
P-2 Copy of Rules of District 50, United Mine Work- ers of America (March 15, 1949)	454

	Page
P-3 Copy of Rules of the United Construction Workers affiliated with United Mine Workers of America (March 15, 1949)	454
P-4 Contract with the Richmond Building and Construction Trades Council (April 15, 1947)	484
P-5 Construction Agreement between Pond Creek Pocahontas Company, Kentucky Division, Huntington, West Virginia and Laburnum Construction Corporation (October 28, 1948)	512
P-6 to 16 Ten Different Instruments, five of which are individual photographs, and the others of which are one or more photographs attached to cardboard . . . Marked respectively 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16	517
P-17 Sketch	518
P-18 Statement of Construction Equipment furnished under contract (October 28, 1948)	520
P-19 Copy of Agreement with Paintsville Carpenters Local No. 646	521
P-20 Construction Agreement, December 8, 1948, between Laburnum Construction Corporation and Pond Creek Pocahontas Company (approximately 11 miles telephone line)	521
P-21 Copy (executed) of Contract dated December 15, 1948, with Spring Fork Development Company (construction of 25 dwellings)	522, 1447
P-22 Laburnum Construction Corporation, Construction Record	566, 660, 1445
P-23 Picket Sign	567
P-24 Picket Sign	587
P-25 Picket Sign	587
P-26 Pages of "The News", official publication of District 50 and United Construction Workers, United Mine Workers of America	592
P-27 Letter dated August 4, 1949, from Pond Creek Pocahontas Company to Laburnum Construction Corporation	600
P-28 Reply from Laburnum Construction Corporation to Pond Creek Pocahontas Company, dated August 4, 1949	601
P-29 Letter from Spring Fork Development Company to Laburnum Construction Corporation dated August 4, 1949	602

Index to Record.

	Page.
P-30 Laburnum Construction Corporation, reply to letter of Spring Fork Development Company, dated August 4, 1949	603
P-31 Certain data with exception of rules mentioned.	608
P-32 A tabulated statement of damages sustained by Laburnum Construction Corporation without reference to future work	635
P-33 Statement of additional work in Breathitt County, Kentucky, plaintiff claims Mr. Salvati agreed Laburnum Construction Corporation would handle, etc.	636, 1523, 1529, 1637, 1763
P-34 A statement showing contracts which Laburnum had with Pond Creek Pocahontas Company, Island Creek Coal Company, and various associated companies * * * showing job profit or loss on each contract, dated January 9, 1951	638, 660, 661, 1450, 1467, 1521, 1523, 1527
P-35 Contract dated September 6, 1947, for 50 prefabricated dwellings, Delbarton, West Virginia, etc.	639
P-36 Executed copy of contract marked June 6, 1948, Brookside and Valley View Stores, Delbarton and Holden, West Virginia, etc.	640
P-37 Letter under letterhead of Island Creek Coal Company, dated September 3, 1948, from C. V. White, real estate agent to Laburnum Construction Corporation	640
P-38 Contract dated September 19, 1948, for construction of an appliance warehouse at Holden, West Virginia, etc.	661
P-39 Contract dated October 21, 1948, for store No. 15, Holden, West Virginia, etc.	662
P-40 Contract dated December 9, 1948, for colored lunch room at Holden, West Virginia, etc.	662
P-41 Order under contract dated December 13, 1948, for a hearing plant at Tipple No. 25, Delbarton, West Virginia, etc.	662
P-42 Agreement dated June 28, 1949, for a job at Bartley Boiler Plant, Bartley, West Virginia, etc.	664
P-43 Supplemental agreement to Plaintiffs' Exhibit 42	665

Index to Record.

	Page
P-44 Laburnum Construction Corporation payroll for week ending July 31, 1939, in four sheets..	668
P-45 Virginia Mechanical Corporation payroll for week ending July 31, 1949, on work in Breathitt County, Kentucky, in two sheets	668
P-46 Copy of letter dated September 5, 1949, from President to Pond Creek Pocahontas Company, Holden, West Virginia, proposal to furnish labor and materials for installing heating plant, etc., at No. 1 Kentucky Mine, etc.	669
P-47 Copy of letter dated September 7, 1949, unsigned but typed, submitting proposal for construction one cement block store building, etc., at Evanston, Kentucky	670
P-48 Copy of letter dated September 29, 1949, typed "Sincerely yours, President," addressed to Pond Creek Pocahontas Company, Holden, West Va., with attached sheet "Proposed Addition to Store Building * * * Bartley, West Virginia" ..	671
P-49 Copy of letter dated November 23, 1949, typed "Sincerely yours, President" another proposal for the addition to store at Bartley, West Virginia	672
P-50 Copy of letter typed "Sincerely yours, President" dated December 29, 1949, to Pond Creek Pocahontas Company, Holden, West Virginia, proposal for construction of a gas station, a service station, at Bartley, West Virginia	672
P-51 Photostat of letter under the Island Creek Coal Company letterhead, dated May 18, 1950, from R. E. Salvati to President of Laburnum Construction Corporation, "no use to make further bids"	673
P-52 Carbon copy of Laburnum Construction Corporation payroll, in two sheets, for the week ending August 7, 1949	679
P-53 Copy of payroll, in two sheets, of Laburnum Construction Corporation, for week ending August 14, 1949	679
P-54 Document regarding various proposals for construction work submitted to Island Creek, its associated and affiliated subsidiary companies.	688
P-55 Unexecuted printed form entitled "Membership Application and check-off authorization, District 50, United Mine Workers of America," with envelope attached	689

	Page
P-56 Unexecuted printed form for recognition of United Construction Workers, District 50, United Mine Workers of America, bargaining agent for employees	690
P-57 Application cards, sixteen in number, for American Federation of Labor membership, sub- numbered 1 through 16, inclusive	730
P-58-2 Interrogatories addressed to Defendant, United Construction Workers affiliated with United Mine Workers, filed August 25, 1950	1074, 1087
P-58-3 Interrogatories addressed to Defendant, District 50, United Mine Workers of America, filed August 29, 1950	1075
P-58-4 Interrogatories addressed to Defendant, United Mine Workers of America, filed August 13, 1950	1075
P-58-5 Interrogatories addressed to United Con- struction Workers, affiliated with United Mine Workers of America, filed October 2, 1950	1075
P-58-6 Interrogatories addressed to Defendant, Dis- trict 50, United Mine Workers of America, Filed October 2, 1950	1076
P-58-7 Interrogatories addressed to Defendant, United Mine Workers of America, filed October 2, 1950	1076
P-58-8 Interrogatories addressed to Defendant, United Construction Workers, filed October 2, 1950	1077
P-58-9 Interrogatories addressed to Defendant, District 50 United Mine Workers of America, filed October 2, 1950	1077
P-58-10 Interrogatories addressed to Defendant United Mine Workers of America, filed October 2, 1950	1077
P-58-11 Interrogatories addressed to Defendant, United Construction Workers affiliated with United Workers of America, filed October 12, 1950	1077
P-58-12 Interrogatories addressed to Defendant District 50 United Mine Workers of America filed October 12, 1950	1078
P-58-13 Interrogatories addressed to Defendant United Mine Workers of America, filed October 12, 1950	1078

	Page
P-58-14 Interrogatories addressed to Defendant United Construction Workers affiliated with United Mine Workers of America, filed November 2, 1950	1078
P-58-15 Interrogatories addressed to Defendant District 50, United Mine Workers of America, filed November 2, 1950	1078
P-58-16 Interrogatories addressed to Defendant United Mine Workers of America, filed November 2, 1950	1079
P-59-1 Answer of United Construction Workers affiliated with United Mine Workers of America, with accompanying exhibits, filed November 14, 1950	1079
P-59-2 Answer of District 50, United Mine Workers of America, with accompanying exhibits, filed November 14, 1950	1079
P-59-3 Answer of United Mine Workers with accompanying exhibits, filed November 14, 1950	1080
P-59-1 A Interrogatories propounded to United Construction Workers affiliated with United Mine Workers of America, filed October 2, 1950	1080
P-59-2 A Interrogatories propounded to District 50 on October 2, 1950	1080
P-59-3 A Interrogatories propounded to International Union on October 2, 1950	1081
P-59-1 B Interrogatories propounded to United Construction Workers affiliated with United Mine Workers of America on October 2, 1950	1081
P-59-2 B Interrogatories propounded to District 50 on October 12, 1950	1081
P-59-3 B Interrogatories propounded to International Union on October 12, 1950	1081
P-59-4 Answer of United Construction Workers affiliated with United Mine Workers of America, filed December 18, 1950	1082
P-59-5 Answer of District 50, United Mine Workers of America, filed December 18, 1950	1082
P-59-6 Answer of United Mine Workers of America filed December 18, 1950	1082
P-59-7 Answer of United Mine Workers to question #125, Interrogatories #4, with accompanying exhibit, filed January 11, 1951	1083

	Page.
Constitution of the International Union, United Mine Workers of America, adopted September 19, 1944. Answer of Interrogatory #2	1083
P-60 United Mine Workers of America exhibit answering Interrogatory #85	1084
P-61 Answer, United Mine Workers, Interrogatory #7 with 11 accompanying sheets	1084
P-62-1 to 62-36 Answer to Interrogatory #6, filed November 14, 1950, including 36 United Mine Workers Journals	1084
Further Interrogatories to the Defendant, United Construction Workers	1155
P-63 Photostatic copy showing geographical extent of the United Mine Workers and District 50	1170
P-64 Charter of District 14 is suspended by President Lewis	1172
P-65 Paragraphs from page 11 of the United Mine Workers Journal dated November 1, 1922, Volume 33, No. 21, headed "Executive Board Restores Autonomy of District 14 and Orders on Election"	1173
P-66 Autonomy of District No. 19 suspended by Executive Board	1176, 1518
P-67 President Lewis Revokes Charter of District 26 and Orders Striking Miners Back to Work	1178, 1534
P-68 Charters of 10 Insubordinate Local Unions revoked by President Lewis in District 1	1178
P-69 Charter of 10 Insubordinate Local Unions revoked by President Lewis in District 1	1180
P-70 Charter of District 12 revoked and Provisional District Organization takes charge of affairs	1181
P-71 President Lewis revokes charter of District No. 14	1182
P-72 Why charter of Local Union 303, Orient Mine, was revoked by the International Union	1183
P-73 International Board names new officers to carry on the business of District No. 12	1183
P-73 A United Mine Workers Journal, Volume 45, No. 1, dated January 1, 1934, page 3, dealing with the Fishwick case (Excluded)	1184
P-74 Virginia, a Provisional District of the United Mine Workers for the first time	1187

Index to Record.

	Page
P-75 Gas and Coke Workers Union chartered by United Mine Workers of America	1188
P-76 Plans for the expansion of District 50 under way. District 50 Drive	
P-77 Some resolutions by District 50	1192
P-78 United Mine Workers of America, office of the International President	1192
P-79 Answer in a suit in Illinois	1193
Excluded	
P-80 Another paper from same suit in Illinois	1193
Excluded	
P-81 Bird's Eye View of the Doings of The International Convention	1208
P-82 United Mine Workers Journal, Volume 52, No. 14, July 15, 1941, page 13, from a speech of John L. Lewis	1209
P-83 Agreement United District 50, United Mine Workers of America and United Construction Workers	1211
P-84 District 50 reports all-time high in membership and local Unions	1213
P-85 New organizing committee named for District 50	1213
P-86 United Mine Workers of America defeats attempt of Metal and Building Trades to hamstring District 50	1215
P-87 Convention commends District 50 progress, all districts urged to aid organizing	1216
P-88 President Lewis commends District 50 and reaffirms United Mine Workers of America goal of organizing	1217
P-89 A letter from the president	1218
P-90 Attacks upon District 50, United Mine Workers of America, by the officers of the Committee Industrial Organization and its affiliates	1219
P-91 Various constitutions	1220
Excluded	
P-92 33rd, 35th, 36th, 37th, 39th and 40th Constitutional Conventions	1220
Excluded	
P-93 Photostatic copies of documentary evidence from the Department of Labor in Washington	1233, 1492

	Page
P-95 Laburnum Construction Corporation, analysis of, for the year ending December 31, 1940. (Two sheets, etc.)	1498
P-95-1 Not described	1498
P-95-2 Laburnum Construction Corporation, analysis of * * * "Total Contract Work completed at December 31, 1942, amount, percentage; at December 31, 1941, amount, percentage; during 1942, amount, percentage," two sheets	1499
P-95-3 "Laburnum Construction Corporation analysis of Gross Profit for the year ended December 13, 1943" a single sheet	1499
P-95-4 "Laburnum Construction Corporation, analysis of Gross Profit for the year ended December 31, 1944," two sheets of tabulated figures	1499
P-95-5 "Laburnum Construction Corporation, analysis of Gross Profit for the year ended December 31, 1945," two sheets of tabulated figures	1499
P-95-6 "Laburnum Construction Corporation, analysis of Gross Profit for the year ended December 13, 1946," three sheets of tabulated figures	1499
P-95-7 "Laburnum Construction Corporation, analysis of Gross Profit for the year ended December 31, 1947," twelve sheets of tabulated figures	1500, 1522
P-95-8 "Laburnum—Pettijohn—analysis of Gross Profit for the year ended December 31, 1944," a single sheet of tabulated figures	1500
P-95-9 "Laburnum—Pettijohn—analysis of Gross Profit for the year ended December 31, 1945," a single sheet of tabulated figures	1500
P-95-10 "Virginia Mechanical Corporation—analysis of Gross Profit for the year ended December 31, 1947," two sheets of tabulated figures	1500
P-95-11 "Virginia Mechanical Corporation—analysis of Gross Profit for the year ended December 31, 1948," three sheets of tabulated figures	1500
P-95-12 "Virginia Mechanical Corporation—analysis of Gross Profit for the year ended December 13, 1949," two sheets of tabulated figures	1501
Defendants' Exhibits (as introduced):	
D-2 Photograph	1252
D-3 Photograph of Laburnum office and Buck Hughes	1253

	Page
D-4 Air photograph of entire outlay from tippie No. 1 down to the houses	1253
D-5 Photograph showing the location of the store and the houses	1253
D-6 Photograph of rock quarry	1253
D-7 Photograph of road leading from the store across the railroad	1253
D-8 Photograph showing the Tippie No. 1 and the offices of Laburnum and the road leading therefrom	1253
D-9 Photograph showing the tippie, the headhouse and Tippie No. 1	1254
D-10 Membership application and check-off authorization, District 50, United Mine Workers of America, signed by Green Stacy	1255
D-11 Same as 10, signed by Matt Miller	1255
D-12 Same as 10, signed by Lee Bach	1256
D-13 Same as 10, signed by Jerry Barnett	1256
D-14 Membership application and check-off authorization, United Construction Workers, affiliated with United Mine Workers of America, signed by George P. Miller	1270
D-15 Same as 14, signed by Hargus Howard	1270
D-16 Same as 14, for Lee Bach	1271
D-17 Same as 14, for Ossie Lovely	1271
D-18 Same as 14, signed by Jerry Barnett	1271
D-19 Same as 14, signed by Ernest Howard	1271
D-20 Same as 14, signed by John Jordan	1271
D-21 Same as 14, signed by Burl King	1272
D-22 Same as 14, signed by Luther Litteral	1272
D-23 Same as 14, signed by Matt Miller	1272
D-24 Same as 14, signed by Avis Salyers	1272
D-25 Same as 14, signed by Green Stacy	1272
D-26 Membership application and check-off authorization on the District 50, United Mine Workers, signed by Green Trusty	1272
D-27 Same as 26, signed by Dan Combs	1273
D-28 Same as 26, signed by Green Conley	1273
D-29 Rules of District 50, United Mine Workers of America, March 15, 1949	1284
D-30 Rules of United Construction Workers affiliated with United Mine Workers of America, revised March 15, 1949	1284

Index to Record.

xiii

	Page.
D-31 Constitution of the International Union, United Mine Workers of America, adopted at Cincinnati Ohio, on October 11, 1948, effective November 1, 1948	1284
Arnett No. 1, Statement of John T. Arnett	1359
D-32 Membership application card in District 50, United Mine Workers of America, of John Moore	1366
D-33 Same as 32, signed by Thomas Jefferson	1366
D-34 Same as 32, signed by James Washington	1367
D-35 Same as 32, signed by Ashley Robinson	1367
D-36 Same as 32, signed by Ed. Wilson, Jr.	1367
D-37 Same as 32, signed by Joseph Austin	1367
D-38 Same as 32, signed by Tom McGee	1367
D-39 Same as 32, signed by George Alexander	1367
D-40 Same as 32, signed by W. J. Kimbrough	1368
D-41 Same as 32, signed by Cornelius Brown	1368
D-42 Same as 32, signed by Jesse Wyche	1368
D-43 Same as 32, signed by Willis C. Washington	1368
D-44 Same as 32, signed by Robert H. Cross	1368
D-45 Same as 32, signed by Irving Davis	1368
D-46 Same as 32, signed by David Jamison	1369
D-47 Same as 32, signed by Roma Little	1369
D-48 Same as 32, signed by John H. Ulentte	1369
D-49 Same as 32, signed by Donald Reams	1369
D-50 Same as 32, signed by John Lindsey	1369
D-51 Same as 32, signed by John H. Stith	1369
D-52 Same as 32, signed by Chester Barnes	1370
D-53 Same as 32, signed by Herman Jones	1370
D-54 Same as 32, signed by Ivey Simpson	1370
D-55 Same as 32, signed by Elias Franklin and El.	1370
D-56 Same as 32, signed by Wesley Lawson	1370
D-57 Same as 32, signed by Theodore T. Mitchell	1370
D-58 Same as 32, signed by James A. Spratley	1371
D-59 Same as 32, signed by Alex. Coleman	1371
D-60 Same as 32, signed by James Jenkins	1371
D-61 Same as 32, signed by John Edmond Sanders	1371
D-62 Same as 32, signed by Joseph J. Rodgers	1371
D-63 Same as 32, signed by William H. Alexander, Jr.	1371
D-64 A copy of the charter issued by the Interna- tional Union, United Mine Workers of America to District 50, under date of September 1, 1936	1441

	Page
D-65 The charter issued by United Mine Workers of America to United Construction Workers Division, under date of June 6, 1942	1442, 1543
D-66 A statement showing the alleged items of damages comprising the plaintiffs' claim of \$500,000	1444
D-67 Laburnum Construction Corporation condensed statement of operations for the years indicated	1445, 1513, 1533, 1534
D-68 Analysis of gross profits for the year ended December 31, 1949, * * * stamped in the corner, Laburnum Construction Corporation. This exhibit consists of six sheets	1450, 1497, 1522
D-69 Stamped in the corner Laburnum Construction Corporation, entitled "Analysis of Gross Profit for the year ended December 31, 1948," and consisting of six sheets	1451, 1497, 1522
D-70 "Laburnum Construction Corporation, Richmond, Virginia—Statement showing contracts with Pond Creek Pocahontas Company, Island Creek Coal Company, and various associated companies, and further showing job profit or loss of Laburnum Construction Corporation on each contract," * * * exhibit has been added to * * * showing the actual amounts of Laburnum Construction Corporation and its gross profit on those jobs after excluding the gross profit of Virginia Mechanical Corporation	1528, 1745
D-71 Editorial page, Richmond News-Leader, Tuesday, February 13, 1951	1600
Plaintiffs' Instructions:	
No. 1	141, 1541
No. 1-A	129, 1681, 1684, 1685, 1688, 1689, 1807
No. 1-B	130, 1671, 1684, 1687, 1688, 1689, 1809
No. 2	130, 1539, 1672
No. 3	131, 1542, 1546, 1673, 1689
No. 4	131, 1546, 1580, 1673, 1689, 1720
No. 5	132, 1579, 1587, 1606, 1672, 1674, 1676, 1689, 1694, 1695, 1696, 1698, 1699, 1816
No. 5-A	132, 1689, 1694, 1695, 1696, 1697, 1698, 1699
No. 6	1606, 1678, 1687, 1689
No. 7	133, 1547, 1590, 1606, 1678, 1680, 1697
No. 8	134, 1597, 1598, 1599, 1606, 1607, 1627, 1648, 1681, 1689, 1690

	Page
No. 9	135, 1598, 1628, 1644, 1649, 1652, 1681, 1686, 1689, 1690, 1806
No. 10	135, 1578, 1598, 1649, 1681, 1689, 1691, 1736, 1737, 1774, 1806
No. 11	1669, 1681, 1692, 1693, 1698, 1699, 1809, 1815
No. "A"	137
No. "B"	137
No. "C"	137
No. "D"	138
No. "E"	139
No. F-1	139
No. "J"	139
No. "M"	140
No. O-2	140
No. "P"	141
No. "R"	141
No. "S"	141
Defendants' Instructions	1699
A	142, 1700, 1703
B	1703
C	1714, 1750, 1786, 1792, 1793, 1794, 1796, 1797, 1804
D	1714, 1792
E	1718
F	1718, 1784, 1786, 1792, 1794, 1795, 1798, 1800, 1802
F-1	1800, 1802
G	142, 1719, 1721
H	142, 1721, 1726
I	143, 1730
J	143, 1730, 1746, 1758, 1759, 1813
K	144, 1759, 1760, 1765
L	145, 1763, 1766, 1767
M	1766, 1767, 1769
N	145, 1769
O	146, 1775, 1776
Defendants' requested Instructions:	
O-1	146, 1784
O-2	1784
P	1776
Q	146, 1776, 1778
R	1778, 1779
S	1779
T	1784, 1786, 1794, 1795, 1796, 1805